Y4.In 8/4:96-94

WHITE COLLAR CRIME IN THE OIL INDUSTRY

JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

AND THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

MAY 30, AND JUNE 4, 1979

Serial No. 96–94

(Committee on Interstate and Foreign Commerce)

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WHITE-COLLAR CRIME IN THE OIL INDUSTRY

WEDNESDAY MAY 30, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
AND SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittees met, pursuant to notice, at 9:30 a.m., in room 2123, Rayburn House Office Building, Hon. John D. Dingell, chairman of the Subcommittee on Energy and Power, and Hon. John Conyers, Jr., chairman of the Subcommittee on Crime, presiding.

Mr. DINGELL. The subcommittee will come to order.

The Chair announces that the rules of the committees with regard to investigations will be carefully followed. The witnesses will be questioned first by counsel, then the Chair will recognize my colleagues in order of their appearance.

The Chair notes that Mr. Conyers, Mr. Gore, and Mr. Synar are present at the time the subcommittees convened.

The Chair is very honored and pleased to announce the two subcommittees, the Subcommittee on Energy and Power and the Subcommittee on Crime, with Chairman John Conyers, are able to get together to deal with questions relating to oil pricing and similar matters.

The 1973 Arab oil embargo and the resulting enormous price increases led to a number of well-recognized schemes to cheat on oil prices and to violate criminal laws prohibiting unjust enrichment and fraud.

Millions of taxpayer dollars have been spent by the Departments of Energy and Justice to ferret out fraud and abuse in the oil industry over the past 6 years. These efforts have resulted in exactly one successful criminal prosecution—the chairman of the board of Florida Power.

In 1976 the Subcommittee on Energy and Power held hearings on the "daisy chain" cases where fuel oil had been fraudulently routed through numerous dummy corporations for the express purpose of illegally inflating the price in violation of price control laws.

Because of the automatic fuel adjustment clause there was no incentive on the part of utilities to keep the price low. DOE identified and audited hundreds of these daisy chain cases. Energy officials alleged that most utilities either suffered from or participated in daisy chains. Yet only the *Larcon-Matrix/Florida Power* case has been sent to grand jury.

Like the daisy chains that were created shortly after the embargo, hundreds of crude oil resellers sprang up overnight. Because of the enormous incentive to flip "old" price-controlled oil at $5 into "new" oil at $12 per barrel, consumers have been bilked of billions of dollars since 1975.

Again, because of the entitlements program there was no incentive on the part of refineries to keep the price low. DOE recognized this scheme in 1975 and identified criminal activity—yet it took until the spring of 1978 to make the first referral to the Justice Department and until the spring of 1979 to obtain the first indictment of a crude oil reseller.

Until the subcommittee's most recent investigation there had been no commitment on the part of either the Department of Energy or the Department of Justice to enforce the criminal laws against the oil industry. This was pointed out in a subcommittee staff report dated December 4, 1978.

Whether this institutional coverup of these cases is due to intentional malfeasance or bureaucratic ineptitude is one of the subjects of our investigation. It is clear that some of the auditors and lawyers in the field offices were auxious to enforce the law. However, they ran into a stone wall in the form of the General Counsel's office in Washington.

It is primarily thanks to the efforts of some dedicated prosecutors who were able to bypass this bureaucratic paper chain that any indictments have been brought at all. We hope today to be able to explore with them ways to insure better enforcement in the future.

In the hearings today and the next week we will look at the criminal enforcement program of the DOE and the interplay with the Department of Justice.

We have put off the public investigation of these Government failures as long as we could. We cannot wait any longer. The responsibility of Congress in its legislative oversight duties is to insure the adequacy of the administration of the law on a continuing basis.

It does no good to perform post mortems when all the Government principals have been promoted to other positions or moved into industry. Unless we can see how the public interest is being served, we cannot tell what resources we should budget for departmental programs or what programs should be given priority.

We know indictments are outstanding. We do not wish to interfere with the rights of any parties to a fair trial. To this end we have scrupulously avoided any actions that might have affected the indictment of any party.

In these hearings, we will restrict our questions to the process and the general schemes to defraud and the failure of the Government to pursue these cases. Evidence and comments on specific cases must be left to the prosecutors in the cases they bring to trial.

My colleagues, I am sure, will carefully respect concerns of the committees on that particular matter.

I now recognize my cochairman, and distinguished friend and colleague from Michigan, Mr. Conyers, for such comments as he chooses to make.

Mr. CONYERS. I want to thank the chairman for the unique idea of joining these two subcommittees from two different standing committees on this very important subject.

I subscribe not only to his opening remarks, but to the fact that we have had a long and personal relationship in Michigan and Detroit, and in the Congress for the years that I have been privileged to serve there with him.

I would like very briefly to add some considerations to this hearing from the point of view of the Subcommittee on Crime of the House Judiciary Committee.

I think we should consider what it is we hope to accomplish. I think that it should be demonstrated during at least the two hearings that have been scheduled, the nature of oil reseller frauds and how they are done.

We want to determine the degree of the inability of the Department of Energy to conduct criminal investigations. We want to examine, with the help of the GAO, the problems in referral of criminal cases from the Department of Energy to the Department of Justice.

We want to demonstrate that the oil industry has fraudulently raised the price of fuel. We want to determine whether the Department of Energy has kept tight limits on the investigations. We, of course, want to hear from the very excellent numbers of witnesses that speak to these questions.

It seems to me that these hearings are necessary because the public is demanding protection from our law enforcement agencies against oil company white-collar crime, and they apparently are not getting it.

The suspicion has arisen that there are scores of daisy chains and oil reseller instances which bilk the public out of billions of dollars which so far hardly anyone, not Departments of Energy or Justice, nor the FBI, nor the FTC, have touched.

The year-long Subcommittee on Crime investigation of white-collar crime has generally revealed that this kind of activity, among the major oil companies, and other Fortune 500 corporations, constitute one of the most serious aspects of the white-collar crime problem.

So, it is with great pleasure that our subcommittee joins this very distinguished Subcommittee on Energy and Power to begin these hearings.

Mr. DINGELL. I am delighted, again, that my distinguished friend from Michigan and his very able subcommittee join us at this particular time.

The Chair reiterates an announcement made earlier. This is an investigative hearing. It is a longstanding practice of the Committee on Interstate and Foreign Commerce that at an investigative hearing, all witnesses testify under oath, and the questioning of each witness is initiated by counsels for the subcommittee; that, thereafter, the members of the committee are recognized in accordance with the rules of the House.

The Chair will therefore call as the first witnesses the Honorable J. A. "Tony" Canales, the U.S. attorney for the southern district of Texas; and Marvin L. Rudnick, Esq., assistant U.S. attorney, Post Office Box 2841, Tampa, Fla.

The Chair does observe that it had been the intention of the two subcommittees that we would have a prior witness. He is not being called at the specific request, the Chair observes, of the Department of Justice.

Gentlemen, if Mr. Canales and Mr. Rudnick would come forward, we would be very pleased to commence receiving your statements.

Gentlemen, in view of the practices of the committee, do you have any objection to being sworn.

Mr. CANALES. No.

Mr. RUDNICK. No.

Mr. DINGELL. Gentlemen, raise your right hand, please.

Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CANALES. I do.

Mr. RUDNICK. I do.

Mr. DINGELL. Gentlemen, would you identify yourselves.

Mr. RUDNICK. My name is Marvin Rudnick, assistant U.S. attorney, Tampa, Fla.

Mr. CANALES. My name is Tony Canales, U.S. attorney for the southern district of Texas.

Mr. DINGELL. Gentlemen, we are happy to welcome you. The committee staff will make available to you a copy of the rules of the Committee on Interstate and Foreign Commerce, and a copy of the rules of the Judiciary Committee.

Do you wish a copy of the rules of the House, also, to be made available to you?

Mr. RUDNICK. No, Mr. Chairman.

Mr. DINGELL. This is simply a practice in conformity with the requirements of the rules when we conduct hearings of this kind. I don't think that either of you have to have the apprehensions of a witness who would otherwise be before this committee, who might be presented with a copy of the rules.

Gentlemen, I understand you each have a statement. Mr. Rudnick, we will recognize you first, and then Mr. Canales.

TESTIMONY OF MARVIN L. RUDNICK, ASSISTANT U.S. ATTORNEY, TAMPA, FLA., AND HON. J. A. "TONY" CANALES, U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF TEXAS

Mr. RUDNICK. Thank you, Mr. Chairman.

Good day, gentlemen of the joint committee. It is, of course, an honor to appear before you today. My name is Marvin L. Rudnick, and I am assistant U.S. attorney in Tampa, Fla.

Sixteen months ago I was appointed a special assistant U.S. attorney by the Justice Department to investigate energy-related criminal violations affecting my middle district of Florida.

When the case went to the jury nearly 3 months ago, four Texas and Florida oilmen were convicted of conspiracy and mail fraud. They have been sentenced to 3 years in prison. Also, the former chairman of the board of the Florida Power Corp. has pleaded guilty to conspiracy and is now in Federal prison, serving a 6-month term.

The case first came to my attention in April 1977, when a Florida Power customer complained that he and others may have been

overcharged for fuel purchased by Florida Power during that period.

Florida Power is our State's second largest utility, based in St. Petersburg, in our State's most densely populated county. At the time I was the only person assigned to the consumer fraud unit for that area, and the adjoining county.

Most of the consumer victims that I met were elderly or handicapped because they are the traditional targets of con artists, who from time to time migrate to our State.

But the oil embargo touched everybody. Eventually there were allegations that 600,000 utility customers served by Florida Power had been overcharged. The consumer who walked through my door said that he had read in Jack Anderson's column that Florida Power was involved in a daisy chain.

He said a daisy chain was a series of oil companies that sold oil back and forth solely to raise the price, while never physically taking possession of the oil. He also said that the Federal Energy Administration had done nothing about it, and that the State public service commission hadn't, either.

I had some prior experience with the energy crisis because during the oil embargo period I was general counsel to the Florida Legislative Energy Committee. Also while working as a staff counsel to the legislature I was introduced to white collar-crime when I was asked to investigate illegal payoffs to statewide elected cabinet officials. After our investigation, one cabinet member resigned, and the second was impeached. Both were subsequently prosecuted by the Federal authorities and sentenced to prison terms.

When the Florida Power customer walked through my door, I recognized his complaint as a serious one, but I didn't know if we could do anything about it. I sent letters to Florida Power and to the public service commission asking to look at their files.

I hoped that after studying these records I would get a better grasp of what a daisy chain really is and whether they are illegal. Neither the power company nor its State regulator chose to send me any records.

I then consulted with the Department of Energy to see if I was interfering with their investigation. They said no. So I asked again. This time Florida Power showed me their files. However, the statute of limitations had run for any criminal prosecution in the State courts.

At that point I had a boxful of records, so I enlisted the support of the State's consumer advocate on utility matters in Tallahassee, the State capital. I was told that they would help me try to get the money back for all the customers.

Meanwhile, the St. Petersburg Times was also investigating the Anderson story. In August 1977 headlines declared that the former chairman of the board, Angel Perez, was involved. The next day I called the Department of Energy and asked for their files.

After receiving the material from DOE, I teamed with the staff of the State attorney general to file an antitrust suit in Federal court in Tampa. That same week the DOE referred the case to the Justice Department. I called to see if I could be of some help.

Not long thereafter, two Justice Department lawyers flew down to look at the records and agreed there were grounds for a criminal

case. The case was then formally referred to the Tampa U.S. attorney's office in January 1978.

Later that month I was asked to join the case as a special prosecutor.

At this time I will be pleased to respond generally concerning my experience in the energy-related matters but must refrain from furnishing any information concerning the pending litigation in my district.

To remind you, there is one case still pending, June 18. Trial is set in Jacksonville.

Thank you very much.

Mr. DINGELL. Mr. Rudnick, thank you for your helpful statement.

We recognize now Mr. Canales.

TESTIMONY OF J. A. "TONY" CANALES

Mr. CANALES. My name is J. A. "Tony" Canales. I am the U.S. attorney for the southern district of Texas.

Pursuant to Chairman Rodino's and Chairman Dingell's letter of May 17, 1979, requesting my appearance before you today, I appear in the spirit of full cooperation. However, I am extremely reluctant to comment upon matters that have been referred to our office and are currently under investigation by our office and the FBI.

I certainly hope that you will appreciate the position that I am in and the effect that your questions and my responses may have both on pending investigations and other matters currently before U.S. district courts in Houston, Tex.

Therefore, in an abundance of caution, I respectfully request that your questions be limited to the general nature of the so-called "oil reseller frauds" rather than specific cases or details associated with cases referred to our office for prosecution.

A statistical breakdown of cases that have been or are being handled by the U.S. attorney's office and their disposition are as follows:

BREAKDOWN OF CASES

Type	Date of referral	Status	Source of referral
1. Reseller	Feb. 28, 1978	Grand Jury	DOE.
2. Conoco	Mar. 31, 1978	Completed	Main Justice & DOE.
3. Reseller	June 8, 1978	Indicted	DOE.
4. Reseller and producer	June 27, 1978	Grand Jury	DOE.
5. Reseller and producer	July 13, 1978	....do	DOE.
6. Reseller	May 4, 1978	Declined—referred to Civil Fraud	DOE.
7. Reseller	Aug. 16, 1978	Declined	U.S. Attorney.
8. Reseller	Aug. 31, 1978	....do	Offshoot of Florida daisy chain case.
9. Reseller and producer	July 31, 1978	Referred to Main Justice; no jurisdiction in S.D. of Texas.	DOE.
10. Reseller	....do	Declined—referred to Civil Fraud	DOE.

Mr. CANALES. The following persons and corporations have been convicted and fined as follows:

Defendant	Date	Offense	Penalty/fine
1. Continental Oil Co. (Conoco)	Aug. 11, 1978	Felony: 18 U.S.C. 1001	$10,000.
2. Continental Oil Co	do	Misdemeanor: 6 CFR 130.100	$5,000.
3. Continental Oil Co	do	Civil penalties	$985,000.
4. Continental Oil Co	do	Refund to U.S. Government	$2,000,000.
5. M. & A. Petroleum Co	do	Felony: 18 U.S.C. 1001	$10,000.
6. Foremost Petroleum Co	do	Misdemeanor: 6 CFR 130.100	$5,000.
7. M. & A. Petroleum Co. and Foremost Petroleum Co.	do	Civil penalties	$85,000.
8. William H. Burnap (Former vice-president, Western Hemisphere for Conoco).	Aug. 8, 1978	Misdemeanor: 6 CFR 130.100	$5,000.
9. Jack E. Guenther (Attorney & Oil Broker).	Feb. 28, 1979	Misdemeanor: 15 U.S.C. 754	5 yr probation.
10. Jack E. Guenther	do	Civil penalties	$841,528.26.
11. Albert B. Alkek	Mar. 17, 1979	Felony: 18 U.S.C. 4	3 yr probation.
12. Albert B. Alkek	do	Civil penalties	$3,240,000.
Total fines			$7,186.528.26.

Mr. CANALES. We will be more than glad to answer any questions that members of the respective committees might have. Further, I would like to add that, on the list of page 2, the list of the referrals of resellers, even though we list 10 cases, that figure might be misleading because one particular reseller case might have as many as 15 persons, 4 or 5 corporations, and so it might not be a true figure when you just say you have 10 cases. We are developing a lot of offshoots from these particular cases.

That is all I have, Mr. Chairman.

Mr. DINGELL. Mr. Canales, the Chair thanks you. The Chair does again advise it is not the concern of the two subcommittees to get into matters either pending now before the grand jury or to go into matters on which there is a criminal case in process.

The Chair now recognizes counsel in accordance with the earlier announcement for purposes of questions, and on conclusion of counsel's questions, the Chair will recognize my colleagues on the subcommittees.

The Chair recognizes counsel.

Mr. BARRETT. Mr. Rudnick, if I follow your testimony, you indicated you initially got into the cases because of press interest and press notoriety, revolving around the *Florida Power* case. Is that correct?

Mr. RUDNICK. That is correct.

Mr. BARRETT. Did you find the press interest and notoriety helpful or a hindrance in your case?

Mr. RUDNICK. I can say truthfully that I do not believe that without the press being involved in this case that this case would ever have gotten to a grand jury; in my personal opinion.

Mr. BARRETT. Could you describe a daisy chain case generally, and the inducements that might be involved in establishing a daisy chain, and how it would operate?

Mr. RUDNICK. If we are talking hypothetically, essentially what happens is a refiner, we are talking about postrefinery process, a refiner would generally have a person working for him who may be the marketing agent, who has authority to sell the oil that is coming out of the refinery.

He then would normally sell to a friend, who was down the chain, so to speak, who would be buying that oil at whatever given price his friend's company would be interested in purchasing it for.

That friend would sell it to another friend, who might be in another company or in a dummy company. When I say a dummy company, I mean a company that is set up solely for the purpose of being able to buy the oil and sell the oil, without ever taking any personal possession of it; that is, physical possession.

That person then would sell it to another dummy company, and maybe to another, depending on how low the price was when they bought it, and how high a price is when they can dispose of it.

In some cases, they might find someone in a big utility who needs some money, extra money, besides his income he gets from the company, and then give him some money.

Now, the problem is, that is just one example. There are many ways. Another type of daisy chain is where a person has the oil in his possession, a commodity that may be in scarce supply, and knows he has a buyer, but he can get 54 cents or 55 cents a gallon for it when he bought it for 18 cents, let's say.

He can't under the rules of DOE sell it at that price. So what he does is he just inserts some companies in between, whichever way he can, to be able to raise the price.

So essentially there are many ways. The scheme is as incredible as the people that are involved in it. It really depends on what a person wants to do, and how scarce the resource is at any given time.

Mr. BARRETT. Now, the subcommittee staff did go through the files of the Department of Energy, and the Federal Energy Administration, and we did note that oil was sold, according to DOE records, at as much as 54 cents a gallon to Florida Power at the same time that the price of oil that was available on the market was less than 20 cents—in some instances 18 cents or less.

That is the price, nevertheless, that, appeared in the public papers, something like Platt's Oilgram was quoting the higher price. It would seem to me that this kind of publication of the highest price that was being paid would indicate a price rigging operation might very well be going on.

Do you have any comment on that?

Mr. RUDNICK. Obviously, I have informed the committee that I cannot comment on any of the facts that are pending before our court. If that question is hypothetical—that is, whether in fact was Platts rigged at that time, I mean, I cannot comment on the facts.

Hypothetically, if you look at the prices back there in the oil embargo as a whole, they did reflect a high price. I believe that you will find if you go through the oil industry, you probably will find prices much lower than that, as generally available to other people.

I am trying to be very careful in not discussing specifics here, and please understand my answer is qualified by that.

Mr. BARRETT. Did the Department of Energy send anybody to cover your trial, Mr. Rudnick?

Mr. RUDNICK. I believe there was one witness that we had, that was there the whole time, Mr. Richka. He wasn't available to be in the courtroom. Of course, he was a witness and the rule was invoked.

Mr. BARRETT. And so he had to be sequestered?

Mr. RUDNICK. That is correct.

Mr. BARRETT. So there was no Department of Energy representative at the time covering the whole trial?

Mr. RUDNICK. None that I knew of.

Mr. BARRETT. When you initially began your investigation, what was your relationship with the Department of Energy, or the then Federal Energy Administration?

Mr. RUDNICK. I didn't know any of them. All I had, sir, was the consumer walking off the street. You understand, I had a one-man office, and you don't really deal with the Department of Energy with all its people under those circumstances.

In fact, our responsibility wasn't anywhere near handling cases like this. Our responsibility is very strictly limited to local consumer fraud-type problems.

Mr. BARRETT. Well, when you became a special prosecutor, in the U.S. attorney's office, what was your relationship at that point with respect to the Department of Energy.

Mr. RUDNICK. We made a policy judgment not to cooperate with them, to be perfectly frank, because we felt that the overall allegations in the press, and from what you hear on the street, was that we didn't want to cooperate with them, that they are not necessarily supportive.

I can't say that that turned out that way. The facts are that the Department was cooperative eventually, but of course you have to understand that when you are going into an important investigation like this, and you hear all these rumors, you want to limit yourself to the facts that are before you and you don't want to take any chances that other people might interfere with them.

So, we chose not to be involved with the Department of Energy.

Mr. CONYERS. Excuse me, counsel.

Mr. Rudnick, are you saying here that as a prosecutor for the U.S. Government you chose not to be involved with the Department of Energy for what reasons?

Mr. RUDNICK. We didn't feel that because of the delays of this case, that it would be beneficial to our investigation to rely on their help at that time.

Mr. CONYERS. What help were they supposed to offer to you in this circumstance?

Mr. RUDNICK. All they gave us were their files. We did not ask for their expertise on a daily basis.

Mr. CONYERS. Yes, but isn't there a relationship and practice and procedure that is supposed to obtain between DOE and the Department of Justice in cases of this kind?

Mr. RUDNICK. I don't know whether there are cases of this kind before Justice before. I mean, you had a situation where I was new to the Department of Justice, that I had to spend 8, 10 months before I became a Federal prosecutor investigating the case, and I was not experienced with how Justice operated, myself.

Mr. CONYERS. In other words, Mr. Rudnick, you are saying you didn't know of any practice or policy or procedure that was to be followed, in cases of this kind, because you hadn't handled any before.

Mr. RUDNICK. Or I don't think Justice had, either.

Mr. CONYERS. And you don't think Justice had handled any cases before. We are talking about daisy chain cases.

Mr. RUDNICK. To my knowledge, that is true, sir.

Mr. CONYERS. Is there any practice that obtains between referrals for prosecution between the Department of Energy and the Department of Justice as relates to any kind of case?

Mr. RUDNICK. Yu really have to ask, sir, the Department of Justice on that. My experience with it is very simple; that is, we do have relationships developed over the period of years, of course, with all the agencies, the FBI, the Department of Agriculture, and when they refer a case to us, as an assistant U.S. attorney, we will review the case in the normal course of business.

In this case, it was quite unusual, obviously. I think the committee has looked at this for a number of years itself, and recognizes that we——

Mr. CONYERS. Aren't you a member of the U.S. attorney's office in Tampa, Fla?

Mr. RUDNICK. Yes, sir.

Mr. CONYERS. And in that connection, aren't you a part of the Department of Justice?

Mr. RUDNICK. That is correct.

Mr. CONYERS. Well, do I hear you separating out your role as a U.S. attorney and that of the Department of Justice as something different? I notice our friend from Houston is nodding in the affirmative. So, I think we should allow both of you to respond to that question, please. I mean, this is very important.

Mr. CANALES. I should have kept my head steady.

We usually refer to it as main Justice. Main Justice is that here in Washington. In the field it is called U.S. attorney's office.

The system—of course, I don't have to educate the committee on this—U.S. attorneys are appointed by the President, with the advice and consent of the Senate, and he gets to select his own staff, his own assistant U.S. attorneys.

When you sign the indictment, you sign the indictment as assistant U.S. attorney, and not a member of the Department of Justice. I understand for pay purposes, classifications, everything else, we are different. We fall under the same umbrella of the Attorney General, of course, and we are under the overall umbrella of the Department of Justice.

But within the Department of Justice, the U.S. attorney's staff is—we are basically sometime independent. We might have policies to follow that they agree to in Washington; sometimes in the field you are the last ones to know about it.

In defense of Mr. Rudnick here, I can tell you that I doubt very much if anybody knows in the U.S. attorney's office for the southern district of Texas what the existing policy is between Justice and the Department of Energy.

We don't get to see those agreements. We don't get to see copies of them unless you specifically request for it. We just don't enter into that nature at all, sir. So, I think we are different.

Mr. DINGELL. Do you have a similar relationship with IRS, and the Department of Agriculture, Bureau of Alcohol, Tobacco and Firearms, and other agencies inside the Department of Justice? In

other words, are all your criminal prosecutions handled in this rather uncoordinated fashion?

Mr. CANALES. I don't think they are that uncoordinated, sir.

Mr. DINGELL. Well, if you don't know what the policies are between main Justice and the folks out in the field, how are you to call this a coordinated approach?

Mr. CANALES. Well, we are speaking specifically about the energy matter.

Mr. DINGELL. Well, I am curious about it. Are you telling me that your energy matters are handled in an efficient and coordinated fashion?

Mr. CANALES. We have a manual that is called the U.S. attorney's manual. From the U.S. attorneys' manual we get all our instructions as to the procedures to handle particular cases.

Because we are in the field to handle criminal matters, we simply get a referral from the agency and run with the ball. We don't stop and ask what is the policy of the department with your agency or our agency. If it is a tax violation, we get the criminal referral from IRS, and we run with it.

Mr. DINGELL. Do you have any standard procedures as to how you work with the referring agencies?

Mr. CANALES. Sir, you work on a case-by-case basis.

Mr. DINGELL. Don't you have general rules that you confer with the people? You serve as the attorney. The other agency serves as the client. Do you consult with these other agencies?

Mr. CANALES. We consult with the case agents. We consult with the SAC. If it happens to be the FBI, DEA, it happens to be the special agent in charge for the IRS, we consult with those people, yes.

Mr. DINGELL. Do you have anybody who has expertise in DOE matters inside the Department of Justice?

Mr. CANALES. There is today an energy section within the Fraud Division of the Department of Justice.

Mr. DINGELL. How long has that been there?

Mr. CANALES. It is my understanding it has been there approximately maybe about a year.

Mr. DINGELL. About a year. Thank you.

I thank Mr. Conyers for yielding.

The Chair recognizes counsel again.

Mr. BARRETT. Mr. Canales, can I ask you to describe a crude oil reseller in general, give us an example, a hypothetical example, perhaps?

Mr. CANALES. A crude oil reseller is an entity, whether it might be composed of individuals, whatever type of corporation, partnership, or individual, that are not brokers; that is, they take title to crude oil, and they go, they might call a producer, they might call somebody who has a gathering system, and agree to purchase a certain amount of barrels, usually in the large quantity—10,000, 5,000, 2,000 amount of barrels.

He has usually no storage capabilities. He usually does not have his own trucking capabilities or transportation capabilities. His main job is to sell this particular crude oil to somebody else who wants to buy it.

He might sell it to a refiner. He might sell it to another reseller. I have never seen one keep it for himself. He is usually selling it to somebody else. So, he acts as the middleman. But he is not a broker. A broker does not take title. These people take title to the crude. They get charged for their pipeline runs. They get charged for transportation and so forth.

Mr. BARRETT. How do they get their financing?

Mr. CANALES. Well, in the oil industry the way they do it, everything has to be either on a case basis or in a situation whereby it has to be paid within a very short period of time, at least within 30 days.

It is very hard to be delivering cash around or issuing checks. So a system many times has developed as what is called a back-to-back letter of credit. The buyer will take the crude, will take a letter of credit to the banker, saying if the seller deposits with the bank certain matters, the letter of credit is supposed to be issued, or it can be banked on it.

It is done strictly by letters of credit many times. Sometimes, of course, it is done on a third-day invoice.

Mr. BARRETT. Now, it is essential for these crude oil resellers to obtain old oil at the old oil price, $5 or $5.25 per barrel, and try to resell it at a higher price, $12 to $14 a barrel. Is that not correct?

Mr. CANALES. That is the way some schemes work. We can have the hypothetical whereby old oil is converted to new, new oil is converted to imported. Old oil can be converted to imported. Or you can even have reconstructed crude converted to new or imported. It all depends on the period of time we are talking about.

We made analysis of the certification of regulations and there was a period of time where new oil was—there was no such thing as new oil, there was just old oil, as per the certification program.

So, everything was converted from old to new. Then we have got new. So things got converted from old to imported, of course old selling for a different price than new and imported. Stripper oil is also converted to imported.

Mr. BARRETT. Most of the old oil, as I understand it, is owned by the major oil companies. Is that not correct?

Mr. CANALES. Well, you could make that statement, because they are the ones that usually have the majority of the fields, the old producing fields. I have read material to that effect, that they do have a large amount of areas classified as old.

But of course what is old today could be new tomorrow. These companies can apply for exemptions to the DOE. They can apply for areas to be declassified as old. I have seen them ask for exemptions, or they might have an exempt refinery.

An exempt refinery does not have to pay, for example, Government entitlements program. So it could be various deviations at different times.

Mr. BARRETT. Would it be possible, speaking hypothetically, for a major oil company which was producing oil and had been producing that oil since before 1973, selling that oil to its own refinery, at some point, since the DOE regulations have gone into effect, selling that old oil to a crude oil reseller who might mark the price of the oil up from $5 to $14, and then sell that same oil to the refiner?

Mr. CANALES. Oh, yes. You could have a situation whereby that occurs by the way, what they call exchanges. In the oil industry, the exchanges of crude are very popular, and very necessary for the industry.

An example. You might have somebody that needs some west Texas crude in Louisiana, and you might have the person in Louisiana with some sweet, Louisiana sweet, and instead of transporting this crude from west Texas to Louisiana, perhaps you just exchange.

Under that same theory, you could have imported crude coming into the country, and you can go ahead and have old crude, and exchange it with the boat, and the crude is supposed to keep its own original certification.

But in the exchange, the old is converted to imported. Those things can easily happen, and have occurred.

Mr. BARRETT. When did you first learn of the crude oil reseller schemes?

Mr. CANALES. I was appointed September 1977 and shortly thereafter I was watching television, watching the program "Sixty Minutes." I saw the "Sixty Minutes" program on the Florida daisy chain.

It came to my attention that most of the defendants in that case were all Texans, that the victims happened to be from Florida. They are all Houston personnel.

I was kind of interested, being they all were Houston companies, and my office in Houston, I will go ahead and start inquiring from the Department of Justice as to the whereabouts of that daisy chain case, that I was interested in prosecuting that case, and if they bring it to my attention, I would go ahead and proceed with it.

The Department of Justice at that time informed me that the case, the daisy chain case in Florida, had originated in Florida, with the State attorney general's office, apparently Mr. Rudnick here, and that it had remained down there.

I therefore made inquiries. I had a friend, a Texan, who works for the Department of Energy, Mr. Terry O'Rourke. I called Mr. O'Rourke sometime in November of 1977 and I said, "Terry, I want to know if you have any more of these Florida daisy chain cases coming out of Houston. If you do, I will be more than glad to handle these cases." He said, "I think we do," and he started inquiring.

The next thing we know, I have a meeting up here with DOE, and Justice, and we get a referral from them. Our first referral came on February 28, 1978. That is where I got started on it.

Mr. BARRETT. Your meeting in Washington with DOE and Justice would have been on December 8, 1977?

Mr. CANALES. Yes, sir, it was sometime in December.

Mr. BARRETT. And it was really because of your personal relationship to Mr. O'Rourke that you got into these things?

Mr. CANALES. Yes, sir. I asked Terry—Mr. O'Rourke, rather—that I was interested in prosecuting these kinds of cases and he said he was also interested in these cases being prosecuted. So he got me together with some of the DOE personnel and I flew to Washington and met at the DOE's office, certain individuals of DOE.

I don't have the names right off the bat, but I think I gave them to you. We discussed these matters.

Mr. BARRETT. But at that meeting in December, DOE indicated they had some cases that were ready to move forward in a short time?

Mr. CANALES. They said they had some cases in the mill that had been looked at, and that none of them were at that particular time ready for referral, that they needed to be cleaned up, that they were in the process of writing the referral.

The referral is basically a report, a summary of the facts of the case, and that I would be getting it shortly, as soon as they would finish it. At that time they informed me they appointed some particular personnel to handle the expediting of these referrals.

Mr. BARRETT. The first reseller case you received, then, under referral would have been this one on February 28, 1978?

Mr. CANALES. Yes, sir.

Mr. BARRETT. I am through with my questions at this point.

Mr. DINGELL. The Chair now recognizes my colleagues. First, my good friend and cochairman, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

Because we have so many members from both subcommittees present, I am going to probably proceed in a way that I hope will be consistent with the policies of both subcommittees.

I am going to ask a number of questions on the record, and ask that if you cannot supply a complete statement to them all, that you submit additional written commentary to assist us.

My first concern is about the amount of staff that you have to prosecute these cases, which are rather enormous. I think that has been implied, if not stated. We are talking about multimillion dollar cases, millions of dollars of illegally gained profits.

What is the nature of the size of your staff and what is the problem in that regard with personnel, including attorneys, accountants, investigators, and FBI personnel?

Mr. RUDNICK. Would you care for me to answer that, sir? In our office, I was cocounsel with Chris Hoyer, who is a 4- or 5-year Justice Department lawyer from the middle district, who has had experience in mail fraud cases in the past, mostly in the medicare area.

Of course, he had no experience in this area, either. Both of us were the ones that prosecuted, investigated the case and prosecuted it to its conclusion.

We had a staff of FBI people, a case agent, Al Scadari, an accountant, Ron Jordan, giving credit where I can, Ron Jordan and a group of maybe two or three other people that were support staff, that would go out in the field and ask questions of various witnesses.

You have to understand we questioned well over 100 witnesses and took thousands of pages of testimony. I think that was it.

We had some help from the Justice Department from time to time. But for the most part, we handled it ourselves.

Mr. CONYERS. So you had two or three people working with you?

Mr. RUDNICK. Two lawyers, and maybe four or five FBI agents. One accountant full time, which is one of the four or five FBI agents.

Mr. CONYERS. Mr. Canales?

Mr. CANALES. Today I have excellent cooperation from the FBI. We have had it since the inception. I have a greater energy, I call it a squad, in Houston that have 11 full-time FBI agents, all with accounting backgrounds, all assigned to do nothing but energy cases.

We also have in addition to that two FBI accounting technicians. They are not special agents. They are accounting technicians. So, we have a total of 13 personnel, in a separately confined area from where the FBI usually is. We have separate quarters within our building.

We also have—throughout this period of time we have had two DOE auditors assigned to our office, again to the same squad. I have, as far as prosecutors, devoted about three-fourths of all my time to the energy cases.

There are two fraud section attorneys, an assistant U.S. attorney handling it. So that is 3¾ assistants handling this thing.

Mr. CONYERS. So you have got 3 lawyers and 11 FBI investigators?

Mr. CANALES. At the present time, yes, sir. Now, when we handled the *Conoco* case, which was the first case that we handled to completion, at that time it was just my assistant U.S. attorney and myself handling—and the FBI agents handling the *Conoco* case.

Mr. CONYERS. Well, I just had described to me what it is like to have an oil company as a defendant by a judge, incidentally, from Texas, in which 15 lawyers for the oil company marched in.

They couldn't tell how many investigators. They hooked up phones in the courtroom. They had their own secretaries, transcribers, and it looked like they were being invaded. Is that a very accurate description of what it is like for the U.S. attorney's office to run into, not to mention just one company, not when there might be more than one involved?

Mr. CANALES. It is not unusual to call a particular oil company a target or a defendant, corporate individual, to have three or four lawyers show up. As a matter of fact, one of them will represent the corporate entity, one of them will represent the individual, and the other one will be the accountant, and then they will have a DOE specialist, either a former employee of DOE, former staff of DOE.

They know more about the regulations than we do, sir. I can tell you that our office did a statistical analysis of just the certification program alone, and we have a flow chart that we have prepared, and from August 30, 1974, until the present there have been nine changes in the certification area.

Each time something had to be certified or not to be certified. Each time it was something different. So, I might get a violation that occurred within a period of time, and I have got to go back and check all of these things.

I didn't have the DOE regulations in my office when I started this thing. I had to go to DOE, to get a copy of it. The FBI didn't have them, either. So, we are faced, yes, with very excellent opposition.

Mr. CONYERS. Didn't you, as a matter of fact, request 25 Department of Energy auditors?

Mr. CANALES. Yes, sir, I did.

Mr. CONYERS. And never got them?

Mr. CANALES. Well, no, sir, I didn't get those auditors. I had eight cases referred to me basically. It is a rule of thumb, I just got it from the air, I said about three auditors per case, with perhaps an FBI agent to supervise.

That will be the ideal type of a team to go after an oil reseller once we have enough evidence of criminal violation.

It was explained to me by DOE that if I was to get 25 auditors in the Houston area, that I would basically be draining their resources from the particular cases they are working on right now, and that I would not be—I would be hurting their program more; that if I insisted on them, I would have them, but that if I would insist on it, I would hurt the present investigation they are conducting now, and hurt future referrals.

So I said, well, that is fine, we will just do it ourselves.

Mr. CONYERS. I have a number of other questions that I would put to you. But I will close with this one. I would like to hopefully meet with you both after this hearing this morning, or today, whenever it concludes.

Isn't it fair to say, Mr. Rudnick—and I am aware that this is an estimate—that perhaps as much as 60 cents of every 90 cents that Americans pay at the gas pump is traceable to profits from white-collar crime that might be analogous to the daisy chain type activities?

Mr. RUDNICK. Well, it is hard to put a figure on it. I certainly don't have a crystal ball to tell you, but what I could say is qualified is this: Last week I went to a pump in Tampa and filled up my car at 92.9 cents. I have an unusual, maybe, background in oil investigations, so I probably know a little bit more than most Americans as to how the oil got there.

I think you can make some speculative estimates that possibly two-thirds of that could be the subject but certainly—two-thirds of that money could be the subject of that type of crime. However, nobody has any figures, sir. I am sure at this stage of our understanding of the problem, those figures won't be available for some time.

Mr. CONYERS. You are quite right. Well, we are trying to get a description, we are trying to establish some parameters in these two subcommittees. That is why your testimony, both of you, has been very helpful this morning.

Thank you, Mr. Chairman.

Mr. DINGELL. The Chair thanks the gentleman.

The Chair recognizes first the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you very much, Mr. Chairman.

I would like to thank both of the witnesses for coming and telling us about their role in the effort to enforce these laws. Of course, the circumstances that led to this debacle are well-known to all Americans.

The foreign oil cartel suddenly pushed the price up 400 percent. In an effort to protect consumers from the full blow that would have otherwise landed, the U.S. Government imposed a set of price

controls on domestic oil which had already been discovered, and which was already quite profitable at current prices.

Subsequently, a large number of people in the oil business invented several schemes to circumvent those controls, and effectively raised the price of old oil from $6 to $14 or within that range.

The two best known examples have been the daisy chain, represented by the case in Florida, which you prosecuted, Mr. Rudnick, and more recently the oil reseller cases, which Mr. Canales has prosecuted in Texas.

One senior DOE attorney has added up all of the money that has been taken through these schemes and said that this is perhaps the largest criminal conspiracy in the history of the United States in terms of the amount of money that has been stolen from the American people.

Yet, there has been a complete and total failure by the Department of Energy to enforce these laws or to investigate the violations of these laws.

The circumstances which led both of you here to this hearing I think reveal the lack of effort on the part of the Department of Energy.

Mr. Rudnick, you found out about violations in your jurisdiction from an average citizen who walked in your front door with a copy of Jack Anderson's newspaper column, and he said "Hey, look at this. This looks like a crime. You are a U.S. attorney, why don't you do something about it?"

You looked at the column and said "Yep, it looks like a crime to me," and you started working on it. The Department of Energy had all of the information in its files. It had failed to lift a finger to do anything to protect the consumers who were having money stolen from them.

Mr. Canales, you, on the other hand, didn't read it in the newspaper. You aggressively sought out a friend of yours after reading or perhaps seeing on the television program 60 Minutes the accounts of the Florida scheme. You said there is a lot of oil being sold around here. There might be something going on here, so you asked a friend of yours in the Department of Energy to look around for you and tell you whether there were any cases that you might prosecute or that you ought to be looking into. And he looked around for a little while and said, "Sure enough, there are a bunch of them," so you got involved in it.

Now if we are going to rely on this kind of stopgap law enforcement for white collar crime, the American people are going to come to the conclusion that the U.S. Government simply does not care about crime, so long as it is committed by someone in a three-piece suit and a nice looking tie, whereas, on the other hand, if someone from a low-income family is trying to steal a few bucks, he is going to be pursued to the ends of the Earth and brought to justice. We must have equal law enforcement at all levels, regardless of the nature of the crime and the circumstances of the person who has committed the crime.

Now I would like to ask you two questions.

First of all, you mentioned the fact that a lot of these cases began right after the embargo, in 1974.

The statute of limitations on criminal violations is 5 years; is that correct?

Mr. CANALES. It is for mail fraud. It is for most general crimes, yes, sir, mail fraud, false statements.

Mr. GORE. How many of these cases are we going to just have to forget about and completely kiss goodbye and just tell the American people that they have had money stolen from them, but because of the complete lack of performance on the part of the Department of Energy, there is no chance of prosecuting these cases?

Mr. RUDNICK. Not mine, I can tell you that.

Mr. GORE. Mr. Canales?

Mr. CANALES. I have one or two cases that I have got statute of limitations problems with. We planned not to have the statute expire on us. We had the so-called *Conoco* case that was a statute problem that we had to drop everything we were doing to work on it.

Mr. GORE. To make the deadline.

I am not asking you just about the cases that are in your files. You see, you have only got the tip of the iceberg because you have only got the ones that your friend informally told you about.

How many of these cases do you think there are that are not going to be prosecuted because of the statute of limitations?

Mr. CANALES. I can't adequately answer that, Congressman, I am sorry.

Mr. GORE. Pardon me?

Mr. CANALES. I can't answer that question.

Mr. GORE. All right, let me ask one final question.

One company source—this is a provocative question and I ask it without prejudice—but a company source told the subcommittee staff that a joint multiple dollar slush fund was developed by a number of resellers "to take care of DOE."

Have you in your reaction, Mr. Canales, uncovered any indication at all that this kind of thing was involved?

Mr. CANALES. Yes, sir, we have conducted a very detailed investigation as to every allegation that has been made, criminal allegation that has been made, against DOE officials from our area, basically the Dallas-Houston office. We have found not one iota of evidence to lead to any criminal impropriety by any DOE official as a result of either giving, somebody being paid some money or whatever, to look the other way, or to make a sloppy audit or whatever. We have found nothing.

What we have found is that during this period of time, that there was a period of frustration, there was a period of paranoia, whereby people will say, "Well, the reason we are not doing something is because maybe somebody got the fix in," and the next guy hears it and says, "Aha, there is a fix." And then before you know, it goes around the room and comes back to me. There was a fix, oh, yes, I knew there was a fix and I started it all. That is where we have encountered a lot of rumors, a lot of innuendoes, and we have subpenaed and looked at bank accounts. We have traced records. We have talked to countless people, that is through the grand jury and through the FBI, in our office and we haven't found any.

I am not saying I missed the boat perhaps somewhere, Congressman, but I haven't seen it. What we have found is, of course, it is perfectly legitimate, a lobbying group, that is, a resellers association, and those people have the right to be organized like any other group in the country and petition the DOE to change regulations. That is all we have found, and those people are above board, and there is nothing wrong with that.

Mr. GORE. Are you familiar with the Denver FBI special agent in charge of investigating cases who just resigned to take a job with Marvin Davis, the Denver oil figure under investigation?

Mr. CANALES. I can't recall the special agent in charge's name right now. I am familiar with the case. The FBI has briefed me on it. I have read the interviews conducted of the special agent in charge, the ex-special agent in charge. We have interviewed most of the parties in that particular case, sir. I am familiar with it.

Mr. GORE. And he is now working for the fellow who is the subject of the investigation?

Mr. CANALES. Well, I am not going to comment on what fellow is the subject for criminal investigation. Today I understand that the special agent in charge is working for a bank in Denver.

Mr. GORE. Thank you, Mr. Chairman.

Thank you.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes now Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman.

I would like to get into the magnitude of the problem and discuss that.

Either one of you may respond to this.

In your experience and information through the limited jurisdictions which you cover, have you found any evidence that this might be a nationwide scheme, which goes outside the limits of Florida or Texas, or a fraternity of a select group of people?

Mr. RUDNICK. If I might, sir, I will refer to the answer I gave briefly to Mr. Barrett about the Platt's Oilgram question where the inferences were that if the price as reflected in Platt's was a high price, that is, let's say, 50 cents, 60 cents, 70 cents, that would be the price that everybody is paying. But if the oil is available at much lower prices, as has been the case in some situations, that means that the prices reflected to the average consumer is the price that is manipulated, as opposed to the price that in fact exists, so you can infer from that, the committee can, what you want, and that is what anyone can see is that the price reflects the manipulated price, the price in Platt's.

Mr. CANALES. Can I just go back to Congressman Gore, to add to my previous answer?

The Denver FBI, sir, did not conduct any intensive investigation for the Houston FBI or the Houston grand jury. Traditionally, the FBI will send leads, and, traditionally, the FBI and other offices will conduct the interviews. Under any specific requests, only our agents in Houston did all the important interviews and everything else. All the Denver FBI office ever did for us was service subpena and receive records for us. I was not afraid of any leaks or any information that affects agent or any agent from FBI Denver would have in our case.

Mr. GORE. I thank you for that additional response.

I thank my colleague for yielding.

You said the special FBI agent was now working for a bank in Denver. That bank is indeed owned by the target of the investigation this agent was conducting; is that correct?

Mr. CANALES. I have no firsthand knowledge as to who owns the bank. I am sure that many people own the bank, sir. Thank you. I am sorry, Congressman, I just had to answer that, sir.

Mr. SYNAR. I asked the question whether in your experience with your limited investigation within your jurisdiction you found this to be a nationwide scheme or a select group of people within a limited sphere of influence?

Mr. CANALES. No, I have seen reseller cases that we have referred that have come out of Louisiana, that have come out of Oklahoma, that have come out of Dallas, west Texas; any area where there is oil producing, it occurred.

Mr. SYNAR. Have you referred those loose ends that you found to the appropriate U.S. attorney in the appropriate States?

Mr. CANALES. Yes, sir.

Mr. SYNAR. What kind of cooperation have you had with the State attorneys general?

Mr. CANALES. We have not made any inquiry or asked for assistance from the State attorneys general of Texas at all, sir.

Mr. SYNAR. Why is that?

Mr. CANALES. Because we feel that this is a Federal question. It is a national area. It can best be handled on a national program. The regulations are in scope national, and for practical purposes, sir, in Texas the State attorney general's office has no criminal jurisdiction at all. Texas is one of those States whereby all criminal jurisdiction is held by the local district attorney's office. The State attorney general is strictly a civil lawyer for the State and has no criminal jurisdiction at all. This is just too big of a matter for a local DA to handle. He handles more the street crime type cases than the white collar crime, and this is something that we should be involved in, sir.

Mr. SYNAR. One final question. You both testified that one of the major problems is that the old oil can be reidentified through the changing of title into imported oil or new oil.

What kind of restrictions would be necessary in the changing of titles if this is where a lot of the the misuse and fraud comes about?

Would you recommend that we have stricter requirements on title for oil in its present state?

Mr. CANALES. No, sir. You need to have the free commerce of oil to be operated without that many restrictions. Oil is traded back and forth. What needs to be done in my opinion is that there needs to be more audits made of resellers. That needs to be more exotically done more often. The certifications should be done not 30 days afterwards, like it reads today, from the very beginning. Today certification does not have to accompany the transfer of the oil. It can be done 30 days thereafter. Somebody should be designated by regulation in the company to be in charge of the certification program, and these things ought to be kept in a separate index or whatever of the company. It ought to be like part of the corporate

books that can be kept. Some people don't keep them. People throw away invoices.

If we are going to make a criminal case, Congressman, this is going to be a paper trail, and without paper, there ain't no trail, and unless I can know where they got the oil from, I need to find out, I need to trace every oil case we have got. We have to trace the oil back to the field. I have got to go back to the first fellow who filed it, and just go back along the line.

I have had cases where I have got to go back 25 buyers to the field, and if you don't think that takes time, and not only that, you have got to trace the money also and find out that everybody was related down the line, so we need to have a stricter enforcement of the certification program as to the recording to be done immediately and not 30 days thereafter and more audits strictly on the certification program, sir.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes the gentleman from California, Mr. Edwards.

Mr. EDWARDS. No questions.

Mr. DINGELL. The Chair thanks the gentleman.

The Chair recognizes now our colleague, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

I would like to follow up on some of the questions that have been asked by the gentleman from Tennessee, Mr. Gore, relative to what procedures are utilized to refer these cases from the Department of Energy to the Department of Justice.

It appears to me that a lot of criminal activity will go unprosecuted because it falls through the cracks if there is not any kind of a formal understanding for the referral of these cases, and I must say I am somewhat shocked to find out that the Florida case was brought in by somebody who read the newspaper, and the Texas case was commenced because the U.S. attorney was sitting home one night watching 60 Minutes.

Do either of you gentlemen know of any agreement, formal or informal, between the Department of Justice and the Department of Energy on the referral of these cases over?

Mr. CANALES. Yes, sir. When I first got involved in this matter, DOE was reluctant to refer the referrals to my office because they informed me that there was a letter of understanding between Justice and DOE as to the procedure or the referral of cases. The letter of understanding, which I have seen and I have read, basically states that it services both the civil referrals and criminal referrals.

As to the criminal referrals, the letter of understanding says that DOE upon having a criminal referral will refer it to the Criminal Division here in main Justice for disposition. And the way I handle that, I informed DOE that they could go ahead and follow that procedure and send to the Criminal Division the referral as per the agreement but to send me a copy of the referral, and I don't know if you have seen the referrals or not. They are all addressed to the assistant attorney general in charge of the Criminal Division, and I have a copy of it.

Upon receiving my copy, I took the position that it was our case, U.S. attorney office's case, and we were going to proceed and not wait for instructions or lead from anybody. We just ran with it. So that is the way I get my cases, by specifically asking DOE to send me a copy of it.

Mr. SENSENBRENNER. In other words, you are saying that DOE deals directly with main Justice in Washington rather than U.S. attorneys' offices in the fields where the jurisdiction might lie.

Mr. CANALES. That is correct, sir.

Mr. SENSENBRENNER. So every prosecution that is initiated is initiated through a referral from DOE to main Justice to the U.S. attorney's office.

Mr. CANALES. Yes, sir.

Mr. SENSENBRENNER. It seems there is a paper trail there too.

Mr. CANALES. Well, unless you get somebody who is interested in the case, and I ask DOE to send me a copy of it, or I say "I won't wait for your referral." I don't have to wait for the referral, Congressman. I can go ahead and act on my own. In many of these cases, we have acted on our own, and the referrals have come in later, so there is nothing magical with waiting for the referral if you know about the violation.

Mr. SENSENBRENNER. Do you feel you have sufficient staff to investigate this information to prepare for taking the case before the grand jury and subsequently to trial?

Mr. CANALES. The last couple of months everybody I turned to asked me, "Do I need more staff?" Everybody is so helpful. I don't need manpower, Congressman. I need expertise, and there is a difference between manpower and expertise, the expertise to know what a run ticket is, a pipeline run ticket, what a large ticket is, how they weigh, and how you gage or measure crude oil, what is bunker oil, residual, what is new, stripper, the terminology. The state of the art today is that there is very few people in Government that know that area.

Most people in the oil business don't go from the oil business to Government. They like the oil business, and so it is very hard for us to get that kind of information. So it has been a learning process. So I don't need to have 50 assistants or 100 auditors. I need to have expertise.

I have come to the conclusion, sir, that we just have to develop within our own confines our own expertise and to start teaching. That is the reason we have kept one particular auditor in our office, so he can learn and go back to teach DOE and the FBI agents the same thing, when DOE goes out to not only look at tunnel vision, just look to certification.

Look at mail fraud. Look at false statements. Look at commercial bribery. There is a tremendous amount of commercial bribery going on on these oil companies and executives going back and forth and changing information. Those are the type of things that we need to get and which can only take time, sir.

Mr. SENSENBRENNER. That brings me to my next question.

Is the quality of the information that is referred to the Department of Justice by the Department of Energy sufficient for the Department of Justice to use that information in the raw, or do you have to completely reinvestigate the case and redo the infor-

mation so that it is of a substantial quality so that you can bring it to either the grand jury or to trial?

Mr. CANALES. We have to completely redo it. Let me tell you why. DOE does only the books of the company at hand. They only do the invoice, and we have found that it is prevalent in the oil industry that you might have adjustments. That oil might have to run from Texas all the way to Michigan, and between here and there, there is spillage. There is change of temperature. There is change of adjustments. Not all of it gets there. So there is constant billings. There is constant readjustments of billings, and it is not uncommon to see in one oil transaction 25 invoices, and each one having a different price adjustment. "You owe me $100." "I owe you less," and so forth. And perhaps the certification might not appear in the first 15 invoices. It might not appear until the very end. Perhaps the DOE auditor only caught the 25th invoice and didn't see any certification. What we do is we try to pick up all those certifications.

I don't know if I have answered the question.

Mr. SENSENBRENNER. So the DOE information that is furnished to the Justice Department is really useless as far as court proceeding or grand jury proceeding is concerned.

Mr. CANALES. No, it is a lead to get into it. It is not useless. It is very valuable. It filters it. It tells us where to go. It leads us to the action, and the referrals they have given us, I have found that their accounting work is excellent, but they are limited. They can't go back all the way to the well. They haven't been able to go all the way back to the well. They haven't covered all 25 invoices, and as a result of that, we have gone through everything they give us, double check it. It is not useless. It is good. It is valuable.

Mr. SENSENBRENNER. I have one further question, Mr. Chairman.

The Department of Energy summary to the GAO investigation indicates that premature Department of Justice involvement could stifle DOE discovery on the grounds that claims of parallel proceeding or DOE's obtaining information for purely criminal investigations under the guise of civil inquiry can be raised as a defense or a trial or an attempt to exclude some evidence at trial.

Have either of you gentlemen run into a claim of that nature on the part of the attorneys for the defendants in the proceedings that you have been involved in?

Mr. RUDNICK. I have not.

Mr. CANALES. No, sir, I have not. What I have run into is that we have talked to corporations or individuals that we did not know that they were the target of a criminal investigation by DOE, so that creates problems for us.

I am of the opinion that DOE, that local, regional DOE's should inform the U.S. office if they have an interest in and are actively pursuing these areas that so and so has been tentatively targeted for criminal investigation.

When we first started these cases, I don't know who the good guys were and who the bad guys, and I, on many occasions, would see certain people and ask them for help, and it turned out they were also targets. We didn't know they were targets.

I finally got together with DOE, and we worked it out, and they gave me a list, and I said "Don't call these people anymore, be-

cause you know, they are going to be targets. We will do it by grand jury."

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes now our colleague from Texas, Mr. Gramm.

Mr. GRAMM. Thank you, Mr. Chairman.

I am simply struck by the fact, in listening to this testimony, that we have yet another case of Government regulation attempting to undervalue a product. The market has not rewarded the consumer, has not rewarded the people who went out and found the oil and dug it up, piped it across the country and refined it and sold it, but has instead set up a system to reward crooks. And it seems to me that while we are pointing blame here today at our primary targets around here, the oil company and DOE, that we ought to look at the regulatory process that set up the regulation to begin with, and, therefore, set up a procedure that rewards crooks and penalizes consumers and penalizes producers.

I would like to begin by going back to a point that was made earlier in the questioning, which, if I understand it, was the following point. It was an assertion that perhaps in the industry or in the economy as a whole, that white-collar crime, if one went out and paid 90 cents for a gallon of gasoline, accounted for 60 percent of that price, and as I understood it, both of you gentlemen basically didn't answer that question.

I would like to ask: Do you believe that white collar crime in the petroleum industry accounts for as much as 60 cents out of every 90 cents paid for a gallon of gasoline?

Mr. CANALES. I yield.

Mr. RUDNICK. As I said earlier, there is no way of telling for sure.

Mr. GRAMM. Well, there is a very simple way of telling in fact. Two-thirds of the oil sold in this country is not regulated, and therefore is selling at roughly the market price. Therefore, the amount on which fraud could occur under either the scheme uncovered in Florida, the scheme uncovered in Texas, is occurring on approximately 30 percent of the production maximum. Assuming that the fraud is 100 percent of the potential, you are not talking about one-third of 60 cents out of the 90 cents, so we know that assertion basically is not true; is that correct?

Mr. RUDNICK. I think it depends, sir, on how you want to count the numbers. As I said, there is no sure way of being able to measure it at this time. The data is not available. It is your own judgment.

Now my judgment is that from 2 years of working in this area, I have developed my own personal private beliefs as to how these profits are made, and how much is made, and it is my belief that it is possible that there could be as much as two-thirds of the money we spend at the pump could be daisy chained. But it is hard to get those figures because——

Mr. GRAMM. I don't think you understood my point. The oil on which the daisy chain could occur is oil because of Government regulation that is being underpriced relative to other oil, OK? If the daisy chain captured 100 percent of that difference, you are

talking about capturing it on 30 percent of the oil production in the country maximum.

With 10 percent capture, you are still talking about nothing like 60 cents a gallon. The point I want to make is this—not that there are not crooks, there are, and the crooks ought to be in jail—the point I am trying to make is that I don't want the consumer at home thinking that 60 cents out of every 90 cents they are paying at the pump is going to crooks. Too much of it is going, and it ought to be stopped. But I think we need to put the thing in perspective.

Mr. RUDNICK. I apologize to the committee for giving that impression. I do not have any evidence of that fact. I am only giving the committee the benefit of my own personal opinion that it is possible that these figures are accurate only because no one really knows, and since I am one of the few people I guess that has looked into it, that I just have that personal bias, and that is my testimony.

Mr. GRAMM. To the knowledge of either of you gentlemen, are you aware of the United States ever attempting to set a dual price on the same product and enforce the maintenance of that price in the marketplace by law?

The point I am making in definition is this: We are defining oil as new or old or new new or world oil on the basis of a legal definition. Oil is, for all practical purposes, the same.

Are you aware of any instance in the history of our country where we have attempted by regulation to produce those differentials on a homogeneous product?

Mr. CANALES. As far as I am concerned, Congressman, I just don't have the answer to your question at all.

Mr. GRAMM. It seems to me—and I would like to go back to a point that you made. It is very easy to criticize DOE in this area. But as I have understood both of you gentlemen, you don't have any example of where DOE has failed to act because of lack of interest, or where DOE is engaged in any kind of conspiracy. As I understood it, and I think your point is a good point, that our problem is expertise, and this is a thing that DOE, like all other areas of Government, is short on.

The point I would like to at least get some response from you on is the point that in attempting to enforce the law here, you are trying to enforce a law that is probably more difficult in terms of illegal activity and white-collar crime than any law that I am aware of that we have ever attempted to enforce, because you are being asked to proctor price differentials on products that are identical, except for a Government edict concerning their price set on a specific date as to when the well was drilled, and I think in trying to assess DOE, and I know it is very popular to criticize DOE or even accuse them as being part of some mass conspiracy, I think it is important that the point be made that we are talking about a very difficult kind of law to enforce, one where there is limited expertise, and that you have got to assess DOE's performance in light of those facts.

Mr. CANALES. Congressman, I have not ever alleged that DOE has been part of any type of a conspiracy to obstruct the enforcement of these regulations. I see the regulations and I have seen

how they work and I will limit my area strictly to the certification program. I really believe, Congressman, that they can be enforced. I really believe they can be workable, and I come from an oil-producing State, and I have land and I have ranching interests, and I have many oil and gas leases from my ranches in south Texas, so I do not think I am an enemy of the oil industry, but we need to—there is no reason in the world, Congressman, that a man or a company who drills a well and produced the well 25 years ago and that well is still producing, and his capital has already been returned to him successfully over the many years, why he should reap the profits of the inflation or why he should reap the profits caused by the Arab embargo or the present embargo.

When he drilled the well maybe it cost $1 a foot to drill. Now it costs $100, but why should he receive that tremendous amount of profit at the expense of the American public?

These regulations I believe do work and can work. We are not saying here that every reseller in the country is a crook.

There is a way to cheat. We have caught them. We are enforcing them. The resellers that I have talked to want to clean up their industry, want to clean up their area, and I just don't feel that these things ought to be brushed aside as unnecessary Government regulation. I think the Government ought to be in these things.

Mr. GRAMM. No, the point I am making is not that they be brushed aside. I was simply pointing out the paradox that here the chief beneficiary of this regulatory program, it seems to me, given that you gentlemen repudiate assertions that as much as 60 percent of production—if I may, Mr. Chairman, may I just finish this point?

Mr. DINGELL. The gentleman may finish the point.

Mr. GRAMM. As much as 60 percent of the price is possibly going to ripoffs. I was simply making the point that is somewhat paradoxical, that the real beneficiary of the regulatory program is not the producer or the consumer, but crooks. I think that is something that makes me unhappy and I am sure it makes the American people unhappy.

Mr. RUDNICK. I am not apologizing for DOE, sir. I think that if this committee walks away today without having the opportunity to know that this country does not have the facts that can tell us how much of that 92.9 cents is part of a ripoff, then we are not doing our job. As a prosecutor I am not doing my job and as Congress you are not doing your job. It is a very serious matter, and I really honestly think that we have to go into this, to be sure that we are able once and for all to know whether we are being ripped off, and I don't say that as just a Justice Department lawyer. I say that as a citizen, and I appreciate the opportunity of letting me be heard.

Mr. DINGELL. The time of the gentleman has now expired. The Chair recognizes our colleague Mr. Volkmer from Missouri.

Mr. VOLKMER. Thank you very much, Mr. Chairman. I have several questions I would like to ask. One of them basically is, and not giving any names or anything, I don't want to prejudice any type of prosecution, but in the cases of which you have either under investigation or presently even indictments, are most of

them just against individuals, or do they involve major oil companies themselves?

Mr. RUDNICK. I have given in my prepared statement that I will not discuss our case. It is a limited nature, I understand, but in our case it was just a limited group of individuals.

Mr. VOLKMER. But companies that were selling the oil that the individual worked for, including Charter, International Oil Co., Signal Oil & Gas, and some of the other companies that are known but are not one of the majors.

Mr. VOLKMER. What I am trying to get a handle on, I have not gotten an answer yet, and I know it is a tough question, but what I am trying to get a handle on is, how involved are the major oil companies in the whole thing?

Mr. CANALES. We have convicted Conoco, and it is part of my presentation. I have given you the dates. In our investigations we have seen some of the majors sell old and buying the same old again by themselves as new. Of course when they bought it it was certified as new, and this occurred as a result of the exchanges.

Mr. VOLKMER. Let me interrupt a minute.

Mr. CANALES. Yes, sir.

Mr. VOLKMER. In your opinion now, and this is not necessarily based on what you discovered, but in your opinion are the resellers working in conjunction with the major oil companies or with the knowledge of major oil companies as to what has been going on?

Mr. CANALES. I can't answer that, sir. I don't know.

Mr. VOLKMER. Do you have any evidence of that? Conoco is one where it did happen. In other words, there is a major oil company sitting out here and he is buying from the resellers, and saying we don't know whether that is really old or new. When the reseller certifies it is new in the sale they just take the word that it is.

Mr. CANALES. Well, I had a major oil company officer call the other day complaining on one of their pipelines one particular crude that was being moved had been sold over 200 times in the pipeline. He called to complain. He said, "Hey, it's costing us to keep up with the ownership of the crude." It isn't exchanged once or twice. It is over 200 times. I don't think—the bigger the corporation, Congressman, the harder it is to get involved in any particular fraud or scheme, because most of the people who get involved in these things will keep the money for themselves. It doesn't go to the corporation.

Mr. VOLKMER. That is one point I was getting at. That is one point, but you may have, or you could have conceivably, in my mind, people within the corporation that become involved for their own personal gain, or drop out of the corporation and become a reseller.

Mr. CANALES. Oh, yes, we found that to be more the rule than the other way around, that people from some of the marketing areas of some of the companies leave the companies and start their own resellers.

Mr. VOLKMER. Were you involved in the case of this Uni Oil Co.?

Mr. CANALES. Yes, sir, that is one of our cases.

Mr. VOLKMER. Is it true or do you know whether or not Judge Ross Sterling, the nephew of the founder of Humble Oil——

Mr. CANALES. I prefer not to comment on that.

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Mr. VOLKMER. Do you know about that or not? I have been given information, provided information——

Mr. CONYERS. It has nothing to do with the case at all.

Mr. VOLKMER. I have been provided with the information that he is a nephew of the founder of Humble Oil who is also Ross Sterling, former Governor of Texas.

Mr. CANALES. Well, I know that he is either the nephew of a former Governor of Texas, and anything above that, sir, I still have trials to try in his court and it would not be appropriate for me.

Mr. VOLKMER. That goes to my next question. What bothers me, just listening to what is going on, it wasn't necessary that these grand jury investigations be held either in Houston or Dallas; correct?

Mr. CANALES. No, it was necessary for that.

Mr. VOLKMER. They couldn't be held in St. Louis, Chicago, Kansas City, or Washington, D.C.? Indictments could have been rendered there. Judges there could have been——

Mr. CANALES. No, you have got to have jurisdiction. You have got to have your venue. If it is a mail fraud area, either for the mailing card, where the mailings were received, or where they were delivered, where the bank accounts are, where the witnesses are, where the fraud occurred, you have got to have venue over these matters, sir. In our situations everything occurred in Houston, and we expect more cases. Houston is the oil mecca of the world. Everything is going to happen in Houston.

Mr. VOLKMER. Does the oil come from Houston, that is old oil?

Mr. CANALES. No. The oil comes from——

Mr. VOLKMER. Oklahoma?

Mr. CANALES. Oklahoma, Louisiana, west Texas, and Texas.

Mr. VOLKMER. There would be no venue there?

Mr. CANALES. No, because perhaps the operator at the wellhead did not commit the fraud. He sold it to a reseller in Houston, and maybe he paid the old price for it, but when the reseller in Houston miscertified it, the miscertification occurred in Houston.

Mr. VOLKMER. So we are stuck with that.

Mr. CANALES. I have referred some cases to Louisiana and Oklahoma, because I did not have jurisdiction in Houston to be handling in Houston.

Mr. VOLKMER. First I want it to be clear that I commend both of you for what you are doing. My questions are not intended and I hope it does not lead you to believe otherwise. I just wish there were more of you. Is there or do either one of you now whether the major oil companies today are attempting, in the Gulf Coast States, to jack up the price of oil?

Mr. RUDNICK. I have no information on that at this time.

Mr. VOLKMER. Pardon?

Mr. RUDNICK. I have no information on that.

Mr. VOLKMER. No evidence whatsoever?

Mr. CANALES. That they are attempting to jack up the price? Obviously they are. It now costs 80 cents a gallon. In effect it is. I don't know up here.

Mr. VOLKMER. In this whole process of determining the crime itself involving the reseller, the best place, the only place I guess to start is actually with the resellers and the auditors; is that correct?

Mr. CANALES. Yes, sir, the audit. You start matching. He bought so much old or he bought so much crude and he sold so much.

Mr. VOLKMER. That is correct.

Mr. CANALES. And the regulations say that anything that you buy you have got to have a certification. Anything that you sell you have got to have a certification. And you start matching them up.

Now with those games are played, which are called inventory imbalance, there is a little inventory imbalance, could tell the auditor, "Well, I bought old. I bought 10,000 barrels of old, but only sold 5,000 barrels of old, and I really sold the rest as new, and I admit I did it, but I am going to make it up in the future. I will make it up next month. Next month I will buy some new and I will lose money as that."

Mr. VOLKMER. Sell it as old?

Mr. CANALES. This keeps going on and on, and maybe at the end of the year you might have a million barrels of so-called inventory imbalance, and then they might send you a certification for all, saying, yes, all this has been certified as old, but there is no price adjustment, and they might comply with the certification, but not with the price.

Mr. VOLKMER. May I ask one question real fast. We have been talking here about oil, and I would like to ask the gentleman from Houston, what about natural gas?

Mr. CANALES. Natural gas is not traded on a day-to-day basis as crude oil is. Natural gas sits on mostly 10-year contracts, 5-year contracts. It is not traded that much. The cities are your principal purchasers of the gas, and therefore they have more standardized long-term contracts, while crude oil——

Mr. VOLKMER. Are you telling us that there is no evidence that there has been markup on old natural gas and selling it as new?

Mr. CANALES. I have not handled a single gas matter yet, and I understand that under the new gas bill there is a 23-tier pricing system, and if we ever got a case like that, I hate to see my staff working on a 23-tier type of a situation. I have not handled any, sir. I have not been referred any, and I know of none.

Mr. VOLKMER. You know of none?

Mr. CANALES. I know of none.

Mr. VOLKMER. That has been brought to your attention now?

Mr. CANALES. Not even by rumor, innuendo, or anything.

Mr. VOLKMER. Thank you very much, Mr. Chairman.

Mr. DINGELL. The Chair thanks the gentleman. The time of the gentleman has expired. The Chair recognizes our colleague, Mr. Gudger.

Mr. GUDGER. Thank you, Mr. Chairman. I would like to address one or two brief questions to Mr. Rudnick. I would like to have it clarified in my own mind. Apparently Florida Power was the purchaser, or at least the distributor of the energy which was the subject of the investigation in one of the cases which you testified about. Now, was Florida Power an electric power company which was using the oil as its power generating source or was it a power company which was distributing home heating oil? What was the commodity?

Mr. RUDNICK. It is an investor-owned utility that generates electricity, at least in St. Petersburg.

Mr. GUDGER. So what we had here was an investor-owned electric power generating facility which was under the control of the State public service commission. The State public service commission, as I understand it, would have allowed a passthrough of the cost of the oil which was one of the energy sources from which the electricity was generated?

Mr. RUDNICK. Through automatic fuel adjustment clauses.

Mr. GUDGER. Correct. So what you are saying is that Florida Power Co. had to be in conspiracy? Was it involved in the prosecution of the group that was reselling and bringing up the price and was it a subject of the prosecution which you testified about?

Mr. RUDNICK. To that question, sir, I can't answer that, because of the outstanding pending case that is going to be tried this month, next month in Jacksonville.

Mr. SYNAR. Would you yield?

Mr. GUDGER. I will be happy to yield to the gentleman.

Mr. SYNAR. In your experience, in either one of your experiences, does the final purchaser have to be a member of the conspiracy for the conspiracy daisy chain to work?

Mr. RUDNICK. Not necessarily, but it could happen.

Mr. SYNAR. If the final purchaser sees crude oil selling at 18 cents a gallon and yet is offered 54 cents a gallon, wouldn't this draw suspicion that some fraud or illegality has occurred?

Mr. RUDNICK. I would think so, but it didn't.

Mr. GUDGER. If I may reclaim my time, I believe your testimony did say that a former chairman of the board to Florida Power Corp. pleaded guilty to conspiracy, and I assume that that certainly draws them into the matter that was under investigation and prosecution.

Now let me get back to the daisy chain operation. We then have an oil which is going to be used in electric power generation, and it is flowing from Texas, we will say, through some means of transportation, over to Florida, and it is going through the hands of various sellers in the process, and the conclusion is that it arrived at a very high price, inconsistent with controls and the costs of transportation, and that your investigation revealed that there was such tampering with the price as to amount to a clear conspiracy. Is that in substance what you are talking about?

Mr. RUDNICK. Well, that is what happened, yes, sir.

Mr. GUDGER. Now, how many tranfers or sales were there in this daisy chain, as you call it?

Mr. RUDNICK. I once again would have to request that I do not discuss the facts of this case. If you ask me the question hypothetically——

Mr. GUDGER. All right, I will ask you the question hypothetically. In a hypothetical case involving the daisy chain of the padding of the price to power generating, the electric power generating company, typically approximately how many transfers or resales would be involved? How many resellers would have their hands on the product?

Mr. RUDNICK. Oh, three or four, five. It could be as much as 10, 20. It depends on the issue. I mean, in most cases it is probably

three or four, because the price can be raised several cents apiece per transaction. Of course, it depends on how low you can buy the oil for. If you can get oil real cheap, you will have to put more companies in.

Mr. GUDGER. Now this was oil which got into the chain of transportation and resale. Somewhere in the State of Texas there are transportation costs being figured in. There are costs of——

Mr. RUDNICK. Sure.

Mr. GUDGER [continuing]. Handling. It is not a classic pipeline transaction, is it?

Mr. RUDNICK. These were barge loads.

Mr. GUDGER. Beg your pardon?

Mr. RUDNICK. These were barge loads.

Mr. GUDGER. These were barge loads, and so we are dealing with a barge ticket situation. Now I would like to get back, if I may, to Mr. Canales, who seems to be familiar with the handling of these pipeline run tickets and these barge tickets, that we may understand the basis of his testimony.

When a reseller is involved in this chain, and he has bought from an independent rigger—I assume this is what we are talking about; it is not one of the majors——

Mr. CANALES. That is right.

Mr. GUDGER [continuing]. That is selling at their pump and he has bought from an independent rigger, and he has bought something that either goes to the barge or goes to the truck or it goes to the pipeline? Now, what does he get to represent his ownership, just a certain certificate of ownership representing what is in that barge, or a portion of what is in that barge, or what is in the pipeline?

Mr. CANALES. Yes, sir, there is an invoice, we call it a pipeline run ticket. The pipeline might be owned by a particular company, and they will charge you a particular rate. It is just strictly by letter. He just informs the pipeline company "I am depositing at your system."

Mr. GUDGER. And if he is fortunate enough to be able to buy it at old oil prices, he has got something where if he is a little bit unscrupulous he may be able to play with it?

Mr. CANALES. That is right.

Mr. GUDGER. Now he has got so many gallons on the ticket, and he can go to a bank and use that as a bank credit source presumably because it is sort of like a warehouse certificate?

Mr. CANALES. Yes, sir, he will have a certificate saying he has delivered into the pipeline system 10,000 barrels of Iranian oil, and the pipeline company will issue a letter to that effect, and he will take that to the bank, and that is part of the requirements of the letters of credit. The letter of credit will have four or five requirements.

Mr. GUDGER. I have got the old Iranian uncontrolled oil there, so we are not dealing with old oil when we talk about that, but let's say we are talking about old oil.

Mr. CANALES. No, sir, Iranian could be old oil under an exchange situation.

Mr. GUDGER. This is an exchange situation?

Mr. CANALES. Yes, sir, in an exchange.

Mr. GUDGER. I can see that, right. All right, in any event he has purchased at old oil price. Now he can sell this to any consumer that he wants to sell it to. He can sell it to another reseller. He can sell it to a refiner, or he can let it go over here to the Florida Electric Co.?

Mr. CANALES. It is open market. That is correct, sir, it is open market.

Mr. GUDGER. You have got an open market product?

Mr. CANALES. Yes, sir.

Mr. GUDGER. And it is in this resale situation that he can change its nature from old oil to new oil, or at least start picking up prices on it that get beyond that would be the proper regulated price?

Mr. CANALES. Yes, sir.

Mr. GUDGER. Now is he entitled to charge transportation fees and other fees in addition to recovering his own costs for the oil?

Mr. CANALES. Yes, sir.

Mr. GUDGER. And these, of course, can be kited upward, and there can be an artificial price acquired in this route, I take it?

Mr. CANALES. Yes, sir, I have seen it, the normal would be 10 cents per barrel or whatever, and I have seen them as high as $1.50. It can be inflated. In many ways you have a situation where the reseller might sell this crude to an innocent purchaser. Somebody just wants to buy crude, a refiner, and as long as he gets the certification he doesn't care, because as was said he doesn't care whether it is old or new, the refiner, but that has not been the case.

The case has been that many of these purchasers of the crude oil have been involved with the original reseller, and they get involved in drilling programs. There are fraudulent drilling programs. They will go ahead and have a side deal and say: "We will go ahead and invest so much money in these drilling programs". They will give each other expensive gifts, so it is not always the innocent purchaser type, if it is another reseller.

Mr. GUDGER. Isn't the refiner caught somewhat in a box, though? Isn't he going to have to turn out a product at the end of the line on which he is paid an average price, which will include some old and some new?

Mr. CANALES. Yes, that is where the entitlements program is completely effective, but the refiner also in many of these cases, they will enter into what we call processing agreements with the reseller. They will tell the reseller, "I'll tell you what, I won't buy your crude. You just give it to me and I will go ahead and sell you product from it," and such a condition——

Mr. GUDGER. This is a machinery of getting what would be beyond the average price for his product?

Mr. CANALES. Yes, sir.

Mr. GUDGER. Isn't it likely selling for this old to new oil class or moving up into an artificial price base, some company like the Florida electric generating company which we referred to?

Mr. CANALES. You are talking about the ultimate purchaser?

Mr. GUDGER. Yes. Well, no, actually the Florida——

Mr. CANALES. It has got to go to a refiner. Eventually it winds up from the wellhead—it has got three steps, from the wellhead to the refiner, from the refiner to the consumer, and——

Mr. GUDGER. But aren't there market forces working on the refiner where he has got to come out with a product which reflects an average cost including some old and some new?

Mr. CANALES. Yes, sir.

Mr. GUDGER. Whereas that would not be the case with the Florida Electric Co., Florida Power Co. as it is called?

Mr. CANALES. It is a qualified yes, sir.

Mr. GUDGER. I yield back the balance of my time.

Mr. DINGELL. The time of the gentleman has expired. The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman. In 1974, there were a dozen resellers. By 1975 there were 6 to 800 resellers. The Department of Energy right now is asking for a reduction in the number of auditors at their Department. Their request for the coming budget would reduce from 600 down to 250 the number of auditors who will be looking at transactions that you two gentlemen have been pursuing over the last couple of years. Do you think that that is a wise policy for the Department of Energy to pursue at this time?

Mr. RUDNICK. Based on my remarks earlier, I would have to say no.

Mr. MARKEY. You would say no. Do you think that, based upon your and Mr. Canales work, that an FBI investigation would be warranted into the activities of the Department of Energy in finding out whether or not corrupt practices are involved in the Department of Energy's failure to aggressively prosecute these violations?

Mr. CANALES. Congressman, I have done one within our area, and I have found that there have been no criminal violations.

Mr. MARKEY. Mr. Rudnick, how do you feel?

Mr. RUDNICK. Well, our investigation regarding DOE was part of the grand jury proceedings, and therefore I would have to decline any comment on that.

Mr. MARKEY. I am not talking about any specific case. I am just talking in general, as you look at the overall situation do you feel that there is reason for this subcommittee to request or to actively seek some type of independent governmental investigation of the activities that did occur at DOE during this time frame?

Mr. RUDNICK. Unfortunately my opinion would be based completely on my evidence, and I cannot even comment on that, even infer from my answer what the answer is, but I can't comment because it would be completely based on my information secured through the grand jury.

Mr. MARKEY. One of the reasons I think that it becomes curious in seeing the way in which the manpower at the Department of Energy was allocated is that previous to this new questioning of whether or not there is a dramatic increase at the pump by local gas station attendants of the price of gasoline, that really there hasn't been any major focus placed upon them, because we felt that the marketplace pretty well served the ability of the American people to be served by competition at that gas station level, but now with the shortage of supply, we are not sure that that indeed is the case, but previous to the beginning of this year I felt and most people do feel that that was the case, and the problem is the

skewing of priorities that the Department of Energy had even before this new energy situation developed, in which the multimillion-dollar criminal cases that you would be pursuing languished while the Department of Energy vigorously pursued alleged criminal activity by mom-and-pop gas stations, such as the Village Green Texaco Station in College Grove, Oreg., Jim and Mary Morton's Service Station in San Francisco, both of which were referred to the Justice Department for prosecution, while at the same time the kinds of cases that you are talking about were totally and completely ignored, and I am wondering whether or not you would feel that that would indicate, given the evidence that you have been able to develop, that there is a lack of attention given to the priorities that should have been addressed during that time frame, without getting into any questions of criminality.

Mr. RUDNICK. Well, rather than an investigation of DOE itself, I think we need to pursue the investigation as to how much oil is really being daisy chained in this country. We have to find out whether the mom-and-pop store in fact is overcharging the people, not probably through any fault of their own, but because the price has been so inflated by the time it gets there that they have no choice.

I think I have read somewhere there are 50,000 gas stations that have closed down in the last 5 years. I mean that is hardly an incentive for competition in the marketplace, when there are less outlets. I mean, if you had the regulations the way they are, as bad as a lot of people think they are, and I agree they are not the best regulations in the world, that doesn't mean that in the free marketplace there is not corruption that is causing the price to go up.

I mean, we might want to call it inflation. But to a prosecutor it is corruption, when there is commercial bribery going on between various people.

Mr. MARKEY. One of the proposals which Secretary Schlesinger has placed before us for consideration is the deregulation of marginal wells which would add about 750,000 barrels of oil a day to the category which is not regulated. It allows for an increase of $6 a barrel to $13 a barrel for that category.

And the way in which we decide whether or not that category of oil is certified is that without any certification with any State, local or Federal agency, the oil companies will be able just to self-certify that they should now be able to charge instead of the old oil price of $6 a barrel the new oil price of $13 a barrel.

And I guess what I am wondering about is whether or not there is enough policing within the free enterprise system to insure that the consumer will not be ripped off by having those individuals be able to take advantage of this situation, and include areas that ought not to be included.

Do you think that the refiners, Mr. Canales, that the refiners knew that this situation was taking place? What is your opinion? Did they know about this?

Mr. CANALES. Some of the refiners in our cases we feel knew about it because there were former close associations.

Mr. MARKEY. Why didn't they do anything about it?

Mr. CANALES. Sir?

Mr. MARKEY. Why didn't they do anything about it?

Mr. CANALES. Well, it is very hard for an auditor, without a badge or anything else, to go to an oil company and start accusing them of any type of criminal activity or conspiracies.

Mr. MARKEY. If we had said to them that we are going to take away your entitlement programs if you don't act in a way which helps to implement a self-policing mechanism within the oil industry, you from the top all the way down to the bottom, do you think that that would have had any kind of amelioratory effect upon this situation?

Mr. CANALES. I don't know, Congressman. I really don't know. The only thing that is going to deter is prosecution. And you can't have prosecution unless you have auditing. And you can't have auditing unless you have auditors. And someone needs to direct me to the particular area.

One area that we are completely ignoring—we are just saying consumers get hurt. The royalty owners get tremendously ripped off. Here is a royalty owner of the land getting only, you know, one-eighth out of $4 a barrel, and the reseller gets, sells it for $12, $13, and the royalty owner doesn't get anything.

Mr. MARKEY. We need to put more personnel on this situation. We have to insure that there is proper enforcement to make sure that the public is not being overcharged for oil.

Who do you think is the proper repository of that manpower? Is the Department of Energy, is the Department of Justice, or are they the local U.S. attorney's offices?

If you had to make a choice, who would you trust to make sure that there is a proper enforcement of these laws?

Mr. CANALES. Well, it would have to be Energy. They would have to run——

Mr. MARKEY. Despite their track record?

Mr. CANALES. Despite everything in the world. It is their responsibility. They have the expertise. They have the auditors. They have the sources of information.

Mr. MARKEY. But they don't have the auditors. They are requesting we cut back the number of auditors from 600 down to 250. That is their own request. Does that indicate a bias on your part, a lack of will to come to grips with this?

Mr. CANALES. I cover 44 counties with 35 assistant U.S. attorneys. Out of the 35 lawyers, only 13 are criminal lawyers. The rest are civil lawyers. We have to defend every governmental agency, whether HEW gets sued or whoever, HEW, HUD, you name it, student loans, VA loan suits, SBA, we are the lawyers for all the Federal action. There is no way in the world that U.S. attorneys can handle, assign personnel to handle effectively that type of investigation, unless somebody filters it.

And that is what I suggest to the committee, that DOE can do. They can filter the investigation, they can center it toward our area.

Mr. DINGELL. The time of the gentleman has expired.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. DINGELL. The Chair recognizes the gentleman from New Jersey, Mr. Maguire.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Gentlemen, I suspect that this series of investigations, the information that is being developed now by this subcommittee, by the General Accounting Office, by U.S. attorney offices, probably will end with some indictments and some convictions of individuals who have been in charge of these fly-by-night operations, people who will demonstrably have been proven to have committed criminal acts in doubling the price of oil, acts which result in millions of dollars a day in additional costs to consumers, billions of dollars since 1975.

But I wonder whether we are going to find very many successful indictments and convictions against major oil companies, producers, refiners.

I wonder if you would give us your opinion as to whether or not this pervasive link, cheating, stealing from the American people, which has gone on as these fraudulent resales between the producer and the refiner have taken place, if you could give us your opinion as to whether that pattern of activity is possibly without the concurrence, indeed the cooperation, of the producers who are doing the selling, and the refiners who are doing the buying?

Mr. RUDNICK. Well, it is hard to believe that there aren't people involved in this country, with all the money that is involved in these types of transactions, that aren't also working for, in responsible positions in major oil companies. It is hard for me to believe. I have no direct evidence of that.

But I think that you will never get to that answer unless you develop some type of a strike force commitment at the Department of Energy level, at the Justice Department level, that will do the very thing that you are asking, and that is look into this area, and find out the truth.

I am telling you now that in my 2 years' experience, we do not have it yet, at least to my knowledge. And I work very closely day to day in this area, trying to find out myself.

I think that until we are ready to get the expertise that Mr. Canales talks about in the Department of Energy, until we are committed to finding out the truth, we are not going to know to what extent criminal activity is going on in the majors.

Mr. MAGUIRE. Mr. Canales?

Mr. CANALES. I don't think we are ever going to get to the majors. The only major that has been convicted we convicted, and only because they turned themselves in. That is the only reason we convicted them.

Mr. MAGUIRE. Let's look at the act that takes place. A producer, let's say a major company, and Mr. McNeff in his statement later is going to talk about Mobil, Exxon, Socal, Conoco, let's take a major producer. That producer ordinarily in the past has sold directly to a refinery. Isn't that the case?

Mr. CANALES. Yes, sir.

Mr. MAGUIRE. Now, if suddenly they start selling to XYZ, Fraudulent Jack Up the Price Reseller Co., Inc., is it conceivable to you that that is an accidental decision, one that was not the result of any deliberate decision? Somebody in the major company had to make the decision to change an established pattern of selling, did they not?

Mr. CANALES. Sure.

Mr. MAGUIRE. And if you are going to sell something, presumably you are going to at least know the identity of the buyer, are you not?

Mr. CANALES. Especially the majors. They don't give credit as easily as other people to resellers. They need to have that letter of credit, it's cash or the letter of credit at the bank. So they are very touchy who they deal with as far as paying of money.

Mr. MAGUIRE. So, therefore, what?

Mr. CANALES. So, therefore, they are going to be very select as to who they are going to deal with.

Mr. MAGUIRE. So they are going to know who they are going to deal with?

Mr. CANALES. Well, they don't have to know. If that person deposits the letter of credit at the bank, they will go ahead and deal with them. Otherwise, they are not going to deal with them.

Mr. MAGUIRE. If we are dealing with a criminal act, or a criminal conspiracy, is it correct to say that the criminal act or the criminal conspiracy is one which is carried out by both the person who buys and the person who sells in a criminal fashion?

Mr. CANALES. Sure. You can have that if you have a buyer-seller relationship, or you can have four or five people of one particular company just by themselves miscertifying. That can be a conspiracy.

Mr. MAGUIRE. And by the same line of argument, if a reseller, a Fraudulent Jack Up the Price Reseller's Co., Inc., suddenly starts selling the oil to the refiner, when in the past the refiner has been buying directly from the producer, isn't it likely that someone who is doing the purchasing at the refinery has had to make a deliberate decision to accept the oil from this intermediary?

Mr. CANALES. That is right. And then you have to follow the second part, what I call the sex appeal. You have got to follow the money then.

So what if one company desires to change a source of crude. It doesn't mean anything. He can go ahead and buy from whoever he wants to buy. It is an open market.

But the second thing you have got to follow, then, is the source of money. You have got to trace the money. Is there any indirect benefit going to any member of that refinery or of that entity? And that is where you get into your commercial bribery areas. That is where you—DOE has not been able to focus on because they have not had the expertise or the guidance to go in that area.

Mr. MAGUIRE. No. But let's say we are dealing with a refinery owned by a major oil company which might or might not be the same major oil company that actually produced the oil in the field. There are going to be people in that company, in charge of refinery operations, who are going to know from whom they are buying the oil?

Mr. CANALES. Yes, sir.

Mr. MAGUIRE. And if there is a criminal act that has been committed with respect to fraudulent pricing of that oil, they, then, are acting as criminally in accepting that as those who sell it to them?

Mr. CANALES. It depends on the quid pro quo, Congressman. If the refiner or the major gets a benefit out of it, the benefit goes to

the corporation, then the corporation would be liable. But if the benefit only goes to one of the individuals——

Mr. MAGUIRE. You are talking about kickbacks?

Mr. CANALES. Yes. It only goes to the individual. I have seen both ways. I have seen it go to the corporation and I have seen it both go also to the individual. And that is the reason in some of our cases we have indicted both corporations and individuals.

Mr. MAGUIRE. Now, you have found in cases involving Conoco specifically, and Conoco is the ninth largest oil company in the United States, you have in fact found that there was criminal activity there?

Mr. CANALES. Yes, sir. Mr. William H. Burnap, who is a former vice president of the Western Hemisphere for Conoco, he was found, entered a plea of nolle, and the court found him guilty and gave him a $5,000 fine.

Mr. GORE. Will the gentleman yield?

Mr. MAGUIRE. Yes.

Mr. GORE. On this point of whether the major oil companies were aware of these schemes, and to what extent they were aware, is there not at least one case, and probably several, where a major oil company produced old oil, and had for years followed the practice of selling it straight into their own refinery, and then they set up or accepted an intermediary, sold the old oil to the reseller, and then repurchased the same oil from their own fields, through the reseller, as new oil, with an increase in price from $6 to $12 or $13.

Mr. CANALES. Have I seen that?

Mr. GORE. Yes. Have you seen a major oil company do that?

Mr. CANALES. I have seen that. But I don't want to imply any criminal activity attached to it. It might be a bad business deal, or it could be—you have got to trace the source, the sex appeal, where is the quid pro quo. You have to find somebody in there getting some benefit from it.

Mr. GORE. But don't they know, under those circumstances—with the chairman's indulgence—if one of the major oil companies, and I think you and I both know the one we are talking about, produces old oil, sells it to a reseller, which then lies about whether it is new oil or old oil, and then the same——

Mr. CANALES. That is the whole key. How do you know that the major—how can you prove that the major knew they are lying?

Mr. GORE. Well, it is the same oil, right? And it comes from their field, it goes to a reseller, the reseller certifies it as new oil, and the major company, which had been buying it for years from themselves, buys it back from this reseller whom they have injected into the chain, as new oil, don't they know under those circumstances?

Mr. CANALES. Things are not that clear because of the exchanges. And that is what muddles up the water. If it was just the same field, everything came from the same field, there is no problem, Congressman. But when you start talking this field is exchanged with this field, and this field is exchanged with this field, and half of this field is stripper, or has been exempted from DOE, and this goes to a refinery, you muddle up all the water. It is hell tracing it.

Mr. GORE. And the American people end up spending several billion dollars more than they should otherwise spend.

Mr. DINGELL. The Chair is going to recognize the gentleman very briefly to pursue his questions, and then the Chair is going to recognize counsel.

Mr. GORE. I appreciate it, Mr. Chairman. And I know that there is a pending case that perhaps you don't want to discuss. But I believe the company involved is Mobil, and the reseller is a company called Carbonite—am I pronouncing that correctly?

Mr. DINGELL. If the gentleman would permit, they are trying very hard in this hearing today to stay with general questions.

Mr. GORE. Let me rephrase the question.

Mr. DINGELL. We have a goodly number of criminal cases pending, a number of matters before the grand jury. And the Chair doesn't wish to prejudice the prosecution of any of those matters.

Mr. GORE. I understand. I respect the chairman's wishes. I will refrain.

Let me rephrase the question.

Are there a number of examples similar to this where major oil companies have taken the oil that they own, and sold it to a reseller who then certified it as new oil, and the majors repurchased it from the reseller? Is that an unusual example, or are there many such examples?

Mr. CANALES. I have seen a couple.

Mr. GORE. Now, do you use "a couple" in the loose——

Mr. CANALES. Yes——

Mr. GORE. More than two?

Mr. CANALES. I don't cover the country, Congressman. I cover the southern district of Texas. And unless it occurs in our counties, I would not have any knowledge or way of knowing. DOE does not keep me abreast of their investigations or allegations.

You know, I just—whatever I am handling, I am handling. And in that light I say it, Congressman.

Mr. GORE. I appreciate the Chair's indulgence, and I appreciate your responses.

Mr. DINGELL. The Chair recognizes counsel for further questions.

Mr. BARRETT. Mr. Canales, if I can direct your attention to the *Conoco* case again, that, as I understand it, involved some illegal payments, somewhere between $1.4 and perhaps $2 million, and that the payments were recorded improperly on the company books in such a way that they could not be found by normal Government auditing practices; is that correct?

Mr. CANALES. Yes. They were never recorded in the company's books at all. They side journaled, so to speak.

Mr. BARRETT. And the person who authorized the setting up of these illegal books was in fact a high corporate official?

Mr. CANALES. Well, there were various who authorized this. But the only one that we have been able to bring forward was Mr. Burnap.

Mr. BARRETT. Now, as I understand it, this case originally came up because Conoco came into the Department of Energy on the 17th of March, 1977, and said, "We have got a problem." The Department of Energy and the FEA, then, began an investigation which in August, I guess, early August of 1977, the Department of Energy sent to the Justice Department in Washington. And if I

read your testimony, that case was then sent down from the Justice Department on March 31, 1978.

Mr. CANALES. Yes, sir. I received a referral at that time. I didn't receive the rest of the documents until a couple of weeks later.

Mr. BARRETT. So it was some time in mid-April of 1978. And the statute of limitations, as I understand it, was running out in August?

Mr. CANALES. Yes, sir, the same year.

Mr. BARRETT. Now, when you got the original materials from Justice, did you have any problems with those materials?

Mr. CANALES. Well, my whole knowledge of all this area had been strictly in the crude reselling. That is what I was geared up for. And you have to understand that once the crude reaches the refinery, after it leaves the refinery, you have another type of a case. You no longer are dealing with crude. You are dealing with refined products.

The *Conoco* case was a refined products case. So not knowing anything about refined products, we have to go educate ourselves. So it was a hard case.

Mr. BARRETT. And you managed to get an indictment and a guilty plea before the statute ran; is that correct?

Mr. CANALES. Yes, sir. We entered into various plea bargain agreements with Conoco. And Mr. Burnap, as a result of that, we collected over $3 million worth of fines.

Mr. BARRETT. Did headquarters Department of Justice ever indicate why they took 9 months to send the referral down to you?

Mr. CANALES. No, sir. The first time I heard about this case was when I was telephonically contacted by the fraud section. They referred the case to me some time in March of 1978. As to where it was before that, I don't know. No, sir, I don't know.

Mr. BARRETT. This case was looked at at some point by the Watergate Special Prosecutor's office, wasn't it?

Mr. CANALES. The material that was sent to me had some grand jury testimony regarding some type of payments made by some public officials, I think some time during the Watergate era. But it was not related at all to our case.

Mr. BARRETT. Mr. Chairman, that concludes my questioning.

Mr. DINGELL. The Chair thanks counsel.

Were there further questions by members of the committee?

Mr. VOLKMER. I have some.

Mr. DINGELL. The Chair recognizes the gentleman for further questioning.

Mr. VOLKMER. Just very briefly, for the record.

I notice on your convictions and civil penalties, an Albert B. Alkek. Is that the first *UniOil* case?

Mr. CANALES. Yes, sir. He appeared in various cases. For example, he was the consultant for M. & A. Petroleum Co., and also I think he founded M. & A. And he was also Coral Petroleum Co., is also one of his companies. The conviction that you find here does not relate to the *Conoco* case. It relates to the so-called *Uni* case. But he was involved in the *Conoco* case also.

Mr. VOLKMER. And all he got was 3 years probation?

Mr. CANALES. That is a plea bargain, sir, that I agreed to. The Government entered into an agreement with Mr. Alkek. We made

the whole plea bargain agreement open, in the record, everything is above board on it. And we made him pay. The illegal profit that he received was $2.24 million. And then on top of that, he also——

Mr. VOLKMER. That you know of.

Mr. CANALES. On this particular transaction. That is all we were talking about. If we find anything else, he certainly will be prosecuted for it. He was not given immunity for tax matters, or anything else, just for this particular transaction. He made under the Uni matter, he made $2.24 million of profit. We made him give that back to the Government.

And on top of that, we made him kick in another $1 million. This money is placed in a special fund with the Department of Energy for consumers, that anybody who has been aggrieved by this can file a claim and go after that particular money. And the same thing with the Conoco. After a period of time, if nobody makes a claim on it, it goes to the general treasury of the United States.

Mr. VOLKMER. Was he involved in the *Conoco* case at all?

Mr. CANALES. Yes, sir.

Mr. VOLKMER. But he wasn't prosecuted under the *Conoco* case?

Mr. CANALES. No, sir, he was not.

Mr. VOLKMER. Can you tell me why?

Mr. CANALES. A lot of people were not prosecuted in the *Conoco* case at the time. At the time it was not the best case in the world. We had—I had 4 months to work on the case. It was a products case. It did not deal with the regulations. It dealt with the Cost of Living Council regulations. The facts were all 1973–74. And a lot had to do, sir, with the Conoco board of directors reporting the violation itself. And the fact that they reported it themselves I took into the Department, the U.S. attorney's office took into account that particular fact, sir.

Mr. VOLKMER. How old is Mr. Alkek?

Mr. CANALES. I would say 70, 70 years of age, sir.

Mr. VOLKMER. Let me just very briefly point something out to you that bothers me and I am sure bothers a lot of people in our system of justice. And that is if you have somebody like this, you just told us, gathered a profit of $2.4 million, personal gain, didn't end up in jail. Yet we will spend, like the gentleman from Massachusetts just talked about, going after the gas station operator that puts it up a penny or two. IRS, with which you have nothing to do, but IRS goes against them. And I know some people that may have failed or made fraudulent returns, and deprived the Government of a few hundred or a few thousand dollars, and end up actually in a penitentiary, serve time.

And here is a man, $2.4 million, didn't get anything—plea bargaining.

Now, how long did Conoco sit in the Washington office of the Department of Justice before it was brought to your attention?

Mr. CANALES. I don't know, sir. I know that Conoco informed DOE, on March 17, 1977. Mr. Carl Coralo, the DOE attorney in charge of this investigation, informed me yesterday that he referred the case by July 14, 1977, to Justice. I received the case some time—March 28, 1978.

Mr. VOLKMER. Ten months. The violation was supposed to have occurred at what time?

Mr. CANALES. 1973–74.

Mr. VOLKMER. Pardon?

Mr. CANALES. 1973–74.

Mr. VOLKMER. 1973. The statute of limitations runs out in 5 years. I see.

Mr. CANALES. Mostly 1972 violations.

Mr. VOLKMER. It appears obvious, I think, to most of us that the Department of Justice pretty well almost blew the whole thing. So you were under time constraints?

Mr. CANALES. Well, I don't want to say——

Mr. VOLKMER. I said it.

Mr. CANALES. Yes, sir, all right. You can say it.

Mr. VOLKMER. I said it. It is very obvious to me that somebody is not on the ball in the Department of Justice. That is all I have to say.

It appears through this whole thing that we have a problem with the Department of Energy and the Department of Justice both.

Thank you, Mr. Chairman.

Mr. CANALES. The Burnap area, we charged August 9, 1973, he had committed the offense. And we brought the matter on that particular date, 5 years later, to court, on the date of the statute of limitations.

Mr. VOLKMER. That is what I say. Someone almost blew it.

Mr. DINGELL. The time of the gentleman has expired.

The Chair would just like to inquire on one small matter. Prior to 1973–74, resellers were a most rare phenomenon in the U.S. market. They did exist on the international market. But they were relatively few.

Mr. CANALES. They were brokers mainly, in the main.

Mr. DINGELL. Now, subsequent to that time, there has been an enormous proliferation of these resellers. These resellers are under controls by the Department of Energy, are they?

Mr. CANALES. Yes, sir.

Mr. DINGELL. Are they subject to the allocations system within the Department of Energy?

Mr. CANALES. No, sir.

Mr. DINGELL. They are not?

Mr. CANALES. Not the allocations. They buy and try as much or as little as they wish.

Mr. DINGELL. Crude is subject to allocation?

Mr. CANALES. I am sorry, sir?

Mr. DINGELL. Crude oil is subject to allocation at this time. It has been during this period.

Mr. CANALES. Are you talking about receiving it through entitlements, the refiner?

Mr. DINGELL. You don't receive it through entitlements, you receive the oil——

Mr. CANALES. I understand, but that program——

Mr. DINGELL. What I am trying to figure out is, what are these folks doing in the business aside from coining money?

Mr. CANALES. What are they doing in the business?

Mr. DINGELL. Apparently they are doing splendidly but what service are they providing?

Mr. CANALES. They don't drill. They don't transport it.

Mr. DINGELL. What does the Bible say, "they neither spin nor do they reap"?

Mr. CANALES. They resell. They are acting as marketing agents for a lot of companies. The arguments I have heard, and they are legitimate arguments, that some small refiners, Congressman, do not have the ability to have a marketing section, and a small refiner depends on people bringing them crude. Obviously the majors don't need to have. They got their own marketing sections, but there are a lot of small refiners that need to have some type of a marketing arm. They can't afford to have their own marketer, and some refiners, for example, are using a certain type of crude. They need to have crude with a lot or a little sulfur and so they depend on exchanges or things like this, sir.

Mr. GORE. Will the chairman yield?

Mr. DINGELL. Yes, I will be glad to yield.

Mr. GORE. Why, then, if that is the purpose that the reseller serves, the useful purpose, why, then, would a major company that had been directing its own oil straight to its own refinery suddenly begin running that oil through a reseller, or purchasing it from a reseller?

Mr. CANALES. The only explanation that I have seen, and also for example on imported crude, on ships that are bringing crude in, is that many times in these majors there is a division within the house that one is the developer of crude, one is in charge of transportation, and one is in charge of marketing, and they sell and exchange themselves, this crude, and as long as each division of the corporation looks good and they have made money that is all they care about. That is one explanation that I have come up with in my own personal view.

Mr. GORE. I have the instinctive feeling that you are being more charitable here than you are being in your courtroom performances. Is there any other reason that you can imagine?

Mr. CANALES. Oh, I can imagine a lot of reasons, Congressman.

Mr. GORE. What is your best judgment? We are trying to develop a better understanding of this. You have given us one explanation. Why else would a major oil company that had been buying oil from its fields and running it to its refineries suddenly begin turning to a reseller, and then repurchase from the reseller as new oil the old oil that they had been producing? Why would they start doing that? What incentive do they have to do that? I don't understand. I really don't.

Mr. CANALES. I don't either, sir.

Mr. DINGELL. Could I inquire? If allocation regulations were being properly enforced, the allocation regulations would compel the producer to sell to a particular refinery, and a particular refinery to buy from a particular producer. Under these circumstances, what would be the place in the marketplace for a reseller?

Mr. CANALES. I do not know, sir.

Mr. DINGELL. I mean if, as I understand it, crude oil should be allocated according to regulations from a producer to a particular refiner, and if that refiner were compelled to procure from that same producer, what is the place in the marketplace that he serves then?

Mr. CANALES. None, none whatsoever under those facts. You don't need a reseller. The refiner obviously has its source of crude at the wellhead, and he can go straight to the wellhead.

Mr. GORE. Where does this reseller get his money, if he is dealing with controlled crude?

Mr. CANALES. That is what I was explaining in the beginning. I have not seen them put up any cash money. It all has operated, what I have seen, they are back-to-back letters of credit that the banks holds. If you can establish a credit line with the bank up to, say, $1 million, you can take that to the bank and you can say, "Bank, I am involved in a deal." The bank will charge you a point or 2 points, whatever, and as long as the documentation is completed, the bank will go ahead and handle the transaction. I have not seen much money——

Mr. GORE. You have told me that the bank makes money on the deal, and I am not aware of any deal that the bank doesn't make money on when they get involved.

Mr. CANALES. Yes, they get the points.

Mr. GORE. But the question, then, is where does the reseller get his money? Does he get it from the seller? Does he get it from the retailer?

Mr. CANALES. If you have a legitimate reseller, the reseller can make so many pennies off each barrel. He can buy at $5.20 a barrel and sell at $5.21, $5.22, or whatever.

Mr. DINGELL. Let's assume that the barrel is controlled. Let's just say that the barrel is sold at $5.20. What can the reseller sell that barrel at? Does he buy it at $5.20 or does he buy it at $5.19?

Mr. CANALES. If the posted price is at $5.20, and the person at the wellhead sells at $5.20, there is no way in the world legally that that reseller can make any money off of it.

Mr. DINGELL. There is no way he can legally?

Mr. CANALES. I don't think he can. Now under the new regulations, he can add to it the costs of transportation, the costs of handling, small amounts. I do not think it could ever increase more than 20 or 15 cents per barrel, but the way I have seen them make, they buy at $4.50 and $5 and sell for $12, and you multiply that by 10,000 barrels.

Mr. DINGELL. I think you have given us a better appreciation of what is going on here as regards resellers and I do thank you.

Gentlemen, we have kept you a long time. Your courtesy and assistance to our two subcommittees are very much appreciated. Thank you. Our good wishes go with you.

The subcommittees will recess until the hour of 1:30 p.m., at which time they will reconvene.

[Whereupon, at 12:05 p.m., the subcommittees recessed, to reconvene at 1:30 p.m. the same day.]

AFTER RECESS

[The subcommittees reconvened at 1:30 p.m., Hon. John D. Dingell presiding.]

Mr. DINGELL. The subcommittees will come to order.

This is a continuation of the hearings commenced this morning between the Subcommittee on Crime and the Subcommittee on

Energy and Power of the Committee on Interstate and Foreign Commerce, cochaired jointly by me and by my distinguished friend from Michigan, Mr. Conyers.

The Chair announces that our first witnesses will appear as a panel—Mr. Herbert F. Buchanan, Mr. Joseph D. McNeff, and Mr. F. Edwin Hallman, Jr.

Gentlemen, we are privileged that you are with us. If you will come forward and identify yourselves for purposes of the record, we will be most pleased to receive your statement.

Gentlemen, I think probably before you take your seats, I should advise, since this is an investigative proceeding, we will proceed in accordance with the practices that have been in place.

Do any of you gentlemen have any objection to being sworn?

Mr. BUCHANAN. No, sir.

Mr. MCNEFF. No, sir.

Mr. HALLMAN. No, Mr. Chairman.

Mr. DINGELL. If you would raise your right hand. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BUCHANAN. I do.

Mr. MCNEFF. I do.

Mr. HALLMAN. I do.

Mr. DINGELL. If you would, gentlemen, please now be seated. Each of you identify yourself for purposes of the record.

Mr. BUCHANAN. I am Herbert Buchanan, Deputy District Manager, Enforcement, Southwest District.

Mr. HALLMAN. I am Ed Hallman, formerly Regional Counsel of Region 4, and Chief Enforcement Attorney for the Southeast District of the Department of Energy. I am presently self-employed as an attorney.

Mr. MCNEFF. I am Joseph McNeff. I am an attorney for the Department of Energy in Dallas, Tex.

Mr. DINGELL. Gentlemen, I think the best order would be for Mr. McNeff to start first. We will recognize you.

TESTIMONY OF JOSEPH D. McNEFF, ATTORNEY, DEPARTMENT OF ENERGY, DALLAS, TEX.; HERBERT F. BUCHANAN, DEPUTY DISTRICT MANAGER, ENFORCEMENT, DOE SOUTHWEST DISTRICT, DALLAS, TEX.; AND F. EDWIN HALLMAN, JR., ATTORNEY, ATLANTA, GA.

Mr. MCNEFF. Thank you, Mr. Chairman.

I have prepared a rather lengthy statement for the committee, and I would like to briefly read some of that, and try to summarize it as best I can.

Mr. DINGELL. Without objection, the entirety of your statement will appear in the record.

We will recognize you for purposes of such comments and summary as you desire to make.

Mr. MCNEFF. Thank you.

Mr. Chairman and members of the subcommittees, in a few days it will be 1 year since I felt compelled to secretly fly to Washington and alert this energy subcommittee of the existence of massive fraud by the oil industry and of the Government's refusal to provide meaningful support for its investigation.

I will try to briefly highlight some of the most important factors that led me to decide I had to come to this energy subcommittee.

I began work in the Houston office of the Federal Energy Administration in August of 1977, and I found that the conditions of the criminal investigation organization within the FEA could best be described as total chaos.

Under the conditions we were trying to investigate the oil companies, it was almost impossible to fully find out what the oil companies were doing, or even to investigate the four reseller cases we had currently under investigation.

Yet, a token force of four Houston auditors had been struggling for years to compile enough evidence to convince the national office to accept these four criminal cases.

I discounted those auditors' jointly held fears that "* * * someone in Washington doesn't want these cases to get out," but I had to agree that we had sufficient evidence against not only those four resellers but many, many other resellers, and also several major companies.

On December 8, 1977, Terry O'Rourke, the counsel for the Administrator of ERA, said that David Bardin and John O'Leary and other top officials of the Department of Energy considered these four reseller cases to be the top priority of the Department, and he urged Justice to immediately get involved to aid our investigations.

I was surprised when the Justice officials casually decided that these nationally important cases should be prosecuted in the oil-permeated city of Houston, but I was encouraged that my Department at least recognized their significance.

I returned to Houston to work on the three remaining crude oil cases. Tony Canales, the U.S. attorney in Houston, had selected the other, Coral Petroleum, for prosecution and its files were forwarded to John Jensvold in Washington to use in writing a criminal referral report.

This turned out to be the extent of Justice's participation in our investigations—patiently waiting for DOE to send Canales our incomplete referrals. None of the promised support from the Department ever materialized, not even the assignment of a secretary.

When I asked my supervisors about it they alternately told me First, it would be coming soon; second, they had no extra resources available, and third, just complete work on the three remaining cases and quit worrying about all the other illegal resellers, that wasn't my assignment.

But more damaging than the failure to give additional support were actions by the national Office which further crippled our own efforts. They included: One, the top auditor and attorney for the region were transferred to another division. In their place was appointed an acting head auditor, who the national office said when they hired him was suspected of possibly taking a bribe from Summit Gas Co., and an acting head attorney who was personal friends with Albert Alkek, who was a key subject of our crude oil investigations.

These appointments, and the national office's refusal to change them, paralyzed our efforts to get support and cooperation within the region.

We were ordered not to conduct any more interviews or depositions of oil company officials. Thus, we had to construct complex conspiracy cases using only partial company records.

In December 1977 the Department issued the omnibus and totally unenforceable "Big Subpena" to the major oil companies. By this single act, the national office precluded any single attorney, investigator, or auditor from demanding company records that they badly needed for their own small investigations of the measures, from issuing a subpena.

That remained in effect as far as I know, for over a year, and may still be in effect.

We were denied permission to even look at the files of Project X, the *Conoco* case, which was related to our investigation of UniOil and contained an important deposition of Albert Alkek.

Four, Tom Humphreys and Bob Gossin, national office special investigator, denied us permission to even look at the files of Project X, which was related to our investigation of UniOil and contained an important deposition of Albert Alkek.

Tom Humphreys demanded to know how I had even found out that Project X was really Conoco.

Five, we were barred from talking with any DOE auditors or attorneys about their investigations of the major oil companies.

Six, the four auditors were punished for working on the criminal cases by denial of promotion opportunities, and all four were trying to transfer. As soon as these three remaining cases were given to Canales, I was to begin working on civil cases for the Office of Special Counsel.

I would like to say—and this was pointed out I think repeatedly by Mr. Rudnick and particularly by Mr. Canales—how important it is to keep the same team working on these cases.

It takes a while to learn what the oil companies are doing, and to become familiar with them. If you break up the team repeatedly, by punishing people from working on it, by transferring them constantly, that means even the best intentioned people have to start all over again to try to learn what is happening.

This is one of the reasons why I came to the committee, because that team was being broken up.

Also, I realized that Justice was not going to expand the probe into the resellers. In late April six FBI agents started working on the weak *Coral Petroleum* case, and five of the six were loaned to the investigation for only 45 days.

The FBI team leader, Mike Williamson, began to worry that the lack of support would doom the *Coral* prosecution and he told me that if Canales lost Coral they would never get to the other three reseller cases.

By this time I had recognized the magnitude of the fraud being perpetrated. The 400 to 500 new crude oil resellers had inserted themselves between the producers and refiners for the sole purpose of changing old oil to new oil.

Also, I knew that absolutely no audit work was being done to try to recover the money that the crude oil resellers had defrauded the American people out of, and also that the 5-year statute of limitations was running.

For these and other reasons I came to the subcommittee. I would like to briefly describe what happened after I came to the subcommittee on June 5, 1978.

On June 14 your staff was flying to Houston to talk to myself and Mr. Buchanan and other auditors and attorneys about this situation. The head of the FBI office in Houston called me and berated me for going to Congress and asking what I was now going to be doing for a living.

He then sent agents over to the DOE offices and they picked up the file cabinet containing Project X.

Mr. DINGELL. What is the name of that individual? I think we would like to know that?

Mr. MCNEFF. Dan Nacaro.

Mr. DINGELL. I think we will be having him before us to discuss this matter with him. If you want, at the appropriate time, I would like to have the full text of that discussion, because I intend to inquire into that matter.

Mr. MCNEFF. I will be glad to, Mr. Chairman.

On the morning of June 15, the next day, as the staff of your subcommittee prepared to talk to me, Mr. Buchanan and other members of the Houston DOE enforcement staff about these problems, the General Counsel of the Department of Energy, Lynn Coleman, and a Deputy U.S. Assistant Attorney General, identified as Mr. Keeney, relayed messages to us that under no circumstances were we to let your investigator see any case files or discuss any of the cases we were working on. If we did, we would be subject to prosecution.

Mr. DINGELL. Now, I want you to give us in detail what they had to say at that time, and who it was that said it, and how this information was communicated to you. Was it communicated to you firsthand?

Mr. MCNEFF. Yes, sir, it was. Two members of your staff, Mr. Peter Stockton and Mr. Michael Barrett, had come to Houston, and as we were preparing to discuss these cases and show them case files, also present were Mr. Weiner, Director of Special Investigations for the Department of Energy who was in Houston, Tom Humphreys, Assistant General Counsel for Compliance for the Department of Energy, and Bob Gossin, the Special Investigator for the Nation.

Mr. Humphreys informed me that I would be subject to prosecution if I talked to your staff investigators about the details of these cases. I think Mr. Barrett and Mr. Stockton also said they had received a call from Mr. Lynn Coleman, with the same message.

I was also told by I think both of your staff and Mr. Humphreys, and Mr. Weiner, that the Justice Department, Mr. Keeney, had relayed this message.

A little later in the day, while we were talking to our staff members, Mr. Jim Easer, in charge of the crude oil reseller investigations for Mr. Canales—he is an assistant U.S. attorney in Houston—came over and relayed that same message, that we were not to talk to your staff or any other part about these cases.

Mr. DINGELL. Can you say on whose behalf he was giving you that information?

Mr. McNeff. I believe Mr. Easer said he was getting a call from Justice. I don't think he identified the person. He may have said Mr. Keeney. I heard that later, from your staff, but Mr. Easer did come back over and reiterate that. This is one of the problems that we have had, especially I have had.

I have been a prosecutor myself, State prosecutor. I understand that you cannot go into facts of pending cases. I have tried not to do that. But at the same time I believe that the Congress, if it is going to find out what is going on, you have to be able to talk to them a little bit about the case.

Not out here in public, but at least in private. You have to actually talk about the details of the cases and why they haven't been prosecuted, and what is actually happening out there.

I might add that that suggests that I cannot talk about the cases was repeatedly emphasized even in writing to me during the last year.

On June 19, when the Department of Energy Inspector General flew from Washington to Houston to talk to me, all my files were sealed and locked up in another room. I was barred from working on any criminal cases and attorney John Jensvold arrived from Washington to replace me.

By June 22 that same attorney, John Jensvold, was so worried about being included in what he saw was a possible coverup that he called this subcommittee.

On June 27, Avron Landesman, the Deputy Special Counsel, arrived to take over. He explained to reporters that the only reason I had made those wild allegations about the size of this fraud was because I was paranoid, nothing short of it.

In private he assured me that I would never again be allowed to work on the criminal crude oil investigations or the civil crude oil investigations, and that the Congress and the public would quickly lose interest in this subject.

In retrospect, the Department's refusal to investigate the crude oil reseller fraud and their reactions to attempts to expose it were predictable.

Over the last year, unburdened by any meaningful work assignments, I have had the time to compare notes with a lot of other DOE auditors and attorneys, both present and former.

I also had time to read some congressional transcripts and books about the oil industry. I would like to share some of my conclusions that I have come to with you now.

I don't believe there is any doubt—and you are hearing this today from Mr. Rudnick and Mr. Canales—that there is no way to know exactly how much the oil industry, through these two frauds, both reseller, crude oil resellers and daisy chains, have increased the amount of the Nation's fuel prices.

But they have increased the general price of fuel and everybody in the Department that has ever worked on these daisy chains, and on these crude oil investigations, particularly the daisy chains, have seen this and have seen these widespread daisy chains.

You can go to any of the auditors in Atlanta. I have talked to them. I have talked to them in St. Louis. We know who the violators are. There are some main violators, and hundreds and

hundreds of minor violators. We have got the evidence of the chains.

Mr. Gore?

Mr. GORE. Nothing. Just listening.

Mr. MCNEFF. I am sorry, but it is a fact. That is what Mr. Rudnick is talking about, that is what Mr. Canales is talking about. We all know it. People have worked on it.

Now, they have done this—there is a lot of ways to do it. But these are two of the ways we have seen with our limited investigation.

One, rather than continue to buy their old oil—talking about the major oil companies—directly from the producers, like they used to do, like they always had done, the major refiners allowed the crude oil resellers to take over their old supply contracts.

Basically, you only have a limited amount of refiners, and they buy all the crude oil. They buy directly. They either buy it for themselves or the independents. But then, contrary to our regulations, they allowed these crude oil resellers to come in, insert themselves between the producers and the major refiners.

Then after these resellers flip the price of the old oil from $5 to $12, $13 a barrel, they bought this same old oil from these resellers.

Now, another way, another main way they did it—and this is what Mr. Rudnick was talking about in the *Florida Power* case—is after this now expensive crude oil was refined the major companies didn't sell their refined products to their traditional buyers, such as the utilities.

Instead, they began supplying newly entered brokers whose only function was to daisy chain the prices while the fuel was being shipped directly from the refinery to the utilities.

By these two stratagems, the major companies have been able to raise the general price of fuel to its present artificially high level, insuring that when controls are removed they will not have to boost their prices even more dramatically and suspiciously.

By the fall of 1974 FEA field personnel had become aware of these obvious and widespread schemes, particularly daisy chaining. A few days after FEA Director Sawhill was fired in December 1974, he tried to insure that the agency would protect the public after he was gone.

In an unusual press conference he announced that the FEA had evidence of, "* * * spurious transactions by fuel oil marketers and brokers which raised the price of heating oil and residual fuel oil by as much as 300 percent between the refinery and utilities * * *" and which "* * * may involve the entire country."

Sawhill also said the FEA had proof of "* * * brokers converting on invoices price-controlled old oil * * * to new oil."

Sawhill then announced the immediate creation of a special task force to investigate and he listed the five types of violations they were to examine, none of which included impermissable pricing hikes between the paper firms in the chains.

He was saying the same thing Mr. Canales and Mr. Rudnick are saying today.

You cannot just look at a regular pricing audit particularly of the daisy chains to see what happened. If you go to one paper

company and all you look at is to see how much he charged the next paper company, if it is legal, if he marks it up 4 or 5 cents, you have no violations.

Mr. Sawhill and many other investigators saw this, and Mr. Canales and Mr. Rudnick see this.

However, FEA officials apparently forgot about the old-to-new-oil violations and launched a curious investigation into the daisy chains. The agency turned Sawhill's Project Escalator into the Utilities project and instructed investigators to audit only for pricing violations and refused to enact FEA regulations which specifically prohibited the paper sales.

Under these restrictions, the auditors were unable to make criminal cases. The individual firms in the chain usually increased the price by an allowable amount each time the paperwork was passed from one firm in the chain to the next.

Indeed, this is what the president of Tauber Oil, one of the main offenders, meant when he recently testified in the *Florida Power* case that such paper sales were both 'common and legal 'in the oil industry.

He said they were legal, which of course they were not, under general conspiracy statutes. But there were really no effective DOE regulations to prohibit them.

As field investigators saw the chains and realized that pricing regulations did not prohibit them, they tried to get national office to accept conspiracy cases against the firms in the chains. National office rejected this logical approach and insisted that the cases be pursued piecemeal for pricing violations.

Against overwhelming evidence national office was thus able to avoid finding significant criminal activity and was able to discontinue the Utilities project.

The many field auditors and attorneys I have talked with that worked on the daisy chain investigations all agree that virtually every utility in the country paid wildly inflated prices because of these chains. They agree these chains are still going today.

Each State they have documented incredible chains and have received only interference from national office. Some have resigned, like Jerome Von Tempske and Dale Kuehn, charging a coverup.

Deputy Secretary O'Leary acknowledged this fact to a New York Times reporter when he said, "We have 15 different people around the country with Mr. McNeff's perspective, saying they need more resources and that there are conspiracies in Washington not to regulate."

Certain key enforcement officials, who first served under William Simon and Frank Zarb, have consistently made a mockery of the FEA's and the DOE's investigations of the oil companies.

William Simon has recently written that his primary objective as FEA Administrator was to protect the oil companies and insure the destruction of the FEA. Simon was outraged when the life of the FEA was extended, but his close friend Frank Zarb assured him that: "At least we're keeping all the garbage in one place so we can control it rather than distribute it all over government."

If the Department really desired to expose the major oil companies' involvement in criminal conspiracies, sufficient evidence

exists. The cosmetic changes made in the crude oil reseller investigations will yield indictments against only small firms.

Also, there appears no interest in reviving the aborted daisy chain investigations.

No matter what the true reason is for the FEA's and DOE's failure to police the oil industry, one fact is certain—confronted by massive, pervasive, continuing frauds these criminal investigations could not have been more effectively limited if they had been subcontracted to the American Petroleum Institute.

The Justice Department has continued to stand strangely silent on the sidelines.

I have a recommendation, after much deliberation, for the members of this subcommittee and the Congress.

I believe that Congress should appoint a special prosecutor of unquestioned integrity, such as Archibald Cox, to investigate and prosecute these oil conspiracies. Only by such an action can the public be assured that their Government really wants to protect them from the criminal schemes by the oil industry.

That concludes my prepared statement.

I would like to clear up one thing I promised Mr. Rudnick I would do so.

When he was being questioned by my Congressman from Texas, Mr. Gramm, there was some confusion between old oil and new oil flips and daisy chains.

Mr. Rudnick stated based on the daisy chains he had seen, he wouldn't be surprised if the price was increased by two-thirds because of the fraudulent activity by the daisy chains. Mr. Gramm questioned, was talking about the old oil to new oil flips.

So it wasn't possible, because only 30 percent of the oil was still controlled, where in fact Mr. Rudnick's estimate didn't take into account the old new oil flips.

[Mr. McNeff's prepared statement follows:]

STATEMENT OF JOSEPH D. MCNEFF, ATTORNEY, DEPARTMENT OF ENERGY

Mr Chairman and members of the subcommittees: In a few days it will be one year since I felt compelled to secretly fly to Washington and alert this Energy Subcommittee of the existence of massive fraud by the oil industry and of the government's refusal to provide meaningful support for its investigation. In response to the Subcommittees' question, what problems caused me to seek the assistance of Congress, I will try to briefly highlight some of the most important factors. But it is difficult to describe the attitudes of my superiors which convinced me that more than good-faith bureaucratic bungling on a gigantic and continuing scale was involved; they seemed uninterested in evidence that the major oil companies had committed criminal acts.

When I began work for the FEA in August, 1977, I was dismayed to find that the chaos and ineptitude of the Agency's criminal investigative organization were even greater than had been reported in the Sporkin Task Force Study. Under such conditions, effective investigations of even minor criminals would have been difficult; against the oil companies it was ludicrous. Yet a token force of four Houston auditors had been struggling for years to compile enough evidence to convince the National Office to accept criminal cases against four crude oil resellers—Summit Gas, Uni Oil, Coral Petroleum, and Westland-Armada. I discounted the auditors' jointly held fears that "someone in Washington doesn't want these cases to get out", but I had to agree that their evidence proved the four resellers were blatantly switching old oil to new oil and had been doing to for years. As I started to examine the file cabinets of data they had gathered, I also began to agree that we had strong evidence against dozens of other illegal crude oil resellers and several major oil companies.

On December 8, 1977, Terry O'Rourke, Counsel for the Administrator of ERA, told Justice that these four reseller cases were the Department's "top priority" and he urged immediate Justice involvement to aid the Department's own investigative efforts—which he promised would now receive substantial new support. I was surprised when the Justice officials casually decided that these nationally-important cases should be prosecuted in the oil-permeated city of Houston, but I was encouraged that my Department at last recognized their significance.

I returned to Houston to work on the three remaining crude oil cases; Tony Canales, the U.S. Attorney in Houston, had selected the other, Coral Petroleum, for prosecution and its files were forwarded to John Jensvold in Washington to use in writing a criminal referral report. This turned out to be the extent of Justice's participation in our investigation—patiently waiting for DOE to send Canales our incomplete referrals. None of the promised support from the Department ever materialized, not even the assignment of a secretary. When I asked my supervisors about it they alternatively told me (1) it would be coming soon, (2) they had no extra resources available and (3) just complete work on the three remaining cases and quit worrying about all the other illegal resellers—that wasn't my assigment.

But more damaging than the failure to give additional support were actions by the National Office which further crippled our own efforts. They included:

(1) The top auditor and attorney for the Region were transferred to another division—in their place was appointed an acting head auditor, who National Office said was suspected of possibly taking a bribe from Summit Gas Co., and an acting head attorney, who was personal friends with Albert Alkek, who was a key subject of our crude oil investigations. These appointments, and National Office's refusal to change them, paralyzed our efforts to get support and cooperation within the Region.

(2) We were ordered by Tom Humphreys, Assistant General Counsel and Jerome Wiener, Director of Special Investigations not to conduct any more interviews or depositions. Thus we had to construct complex conspiracy cases using only partial company records.

(3) In December, 1977, the Office of Special Counsel issued the omnibus and totally unenforceable "Big Subpoena" to the 34 major oil companies. This single act precluded any auditor, investigator or attorney in the field from issuing a subpoena to a major company to get needed information.

(4) Tom Humphreys and Bob Gossin, National Office Special Investigator, denied us permission to even look at the files of Project X—which was related to our investigation of Uni Oil and contained an important deposition of Albert Alkek. Tom Humphreys demanded to know how I had even found out that Project X was really Conoco.

(5) We were barred from talking with any DOE auditors or attorneys about their investigations of the major oil companies.

(6) The four auditors were "punished" for working on the criminal cases by denial of promotion opportunities—and all four were trying to transfer. As soon as these three remaining cases were given to Canales, I was to begin working on civil cases for the Office of Special Counsel.

Also, I realized that Justice was not going to expand the probe into the resellers. In late April, six FBI agents started working on the weak Coral Petroleum case, and five of the six were loaned to the investigation for only 45 days. The FBI team leader, Mike Williamson began to worry that the lack of support would doom the Coral prosecution and he told me that if Canales lost Coral they would never get to the other three reseller cases.

By this time I had recognized the magnitude of the fraud being perpetrated. The 400-500 new crude oil resellers had inserted themselves between the producers and refiners for the sole purpose of changing "old" oil to "new" oil; they performed no other services. And they had done so at the sufferance of the producers and the refiners: we saw the kickbacks being paid to the producers and the active involvement of Mobil, Exxon, SoCal, Coastal States and many other refiners.

Also I knew that absolutely no audit work was being done to try to recover the money from these frauds and that the five-year statute of limitations would soon be running out on many of the violations.

Also disturbing to me was the installation in May of Lynn Coleman as DOE's General Counsel. His old firm, Vinson, Elkins, Searls, Connally and Smith, had represented many of the criminal resellers. These reseller frauds were so blatant and so well known within the industry that many of the lawyers the companies had hired had to know exactly what was really happening. In fact, the resellers had masked their illegal activities behind a blizzard of legal documents—phony joint

venture contracts, bogus exchange agreements and incorporation of dummy companies.

For these and other reasons, I decided to come to this Subcommittee. I would now like to briefly detail what happened after my visit of June 5, 1978.

On June 14, 1978, while your staff was flying to Houston to investigate, the head of the Houston FBI office called me in and berated me for going to an outside agency and asked me what I was now going to do for a living. By the time I had walked back to DOE offices, FBI agents were hastily removing the locked file cabinet containing Project X.

On the morning of June 15, as members of your staff prepared to examine files and talk to witnesses, both the General Counsel of the DOE and an Assistant U.S. Attorney General relayed messages that under no circumstances were we to let your investigators see any case files or discuss any of the cases we were working on. If we did, we would be subject to prosecution.

On June 19, when the DOE Inspector General arrived to talk to me, all my files were sealed and locked up in another room. I was barred from working on any criminal cases and John Jensvold arrived from Washington to replace me.

By June 22, Jensvold was so worried about being included in what he saw as a "cover-up" that he called the Subcommittee.

On June 27, Avron Landesman, the Deputy Special Counsel, arrived to take over. He explained to reporters that the only reason I had made those "wild allegations" was because I was "paranoid—nothing short of it." In private, he assured me that I would never again be allowed to work on the crude oil investigations and that the Congress and public would soon lose interest.

But as the staff of this Subcommittee continued to document the enormity of the reseller frauds, the top officials of the DOE reluctantly began to concede that for over four years, while hundreds of illegal resellers flooded into the market, they had somehow overlooked the snowballing evidence from the field and failed to refer to Justice a single crude oil reseller case. And Deputy Secretary O'Leary once again appeared on "60 Minutes": to a suspicious nation he agreed that "I think it is altogether possible" that these unexplainable failures by his top officials might be due to reported oil slush fund payments—yet he expressed no alarm.

Now these same officials proudly point to a recently hired staff of attorneys, with little or no criminal law experience, and they insist that the Department's criminal investigations are now in good shape.

In retrospect, the Department's refusal to investigate the crude oil reseller fraud and their reactions to attempts to expose it were predictable. During the last year, unburdened by the assignment of any meaningful work, I have had time to compare notes with other DOE auditors and attorneys, read transcripts of congressional hearings into the FEA and DOE and try to make some sense of what it all meant. I would now like to briefly share some of my conclusions with you.

(1) The oil industry, under the direction of the major companies, have fraudulently raised the general price of the nation's fuel. They have accomplished this in two major ways. (1) Rather than continue to buy their old oil directly from the producers, the major refiners allowed crude oil resellers to take over their old supply contracts, and then the refiners purchased the flipped oil from the illegal resellers. (2) After this now expensive crude oil was refined, the major companies did not sell their refined products to their traditional buyers, such as utilities. Rather they began supplying newly entered "brokers" whose only function was to "daisy-chain" the prices while the fuel was being shipped directly from the refinery to the utilities.

By these two strategems the major companies have been able to raise the general price of fuel to its present artificially high level, insuring that when controls are removed they will not have to boost their prices even more dramatically and suspiciously.

(2) By the fall of 1974, FEA field personnel had become aware of these obvious and wide-spread schemes, particularly "daisy-chaining." A few days after FEA director John C. Sawhill was fired in December, 1974, he tried to insure that the Agency would protect the public after he was gone. In an unusual press conference he announced that the FEA had evidence of "spurious transactions by fuel oil marketers and brokers which raised the price of heating oil and residual fuel oil by as much as 300 percent between the refinery and utilities" and which "may involve the entire country." Sawhill also said the FEA had proof of "brokers converting on invoices price controlled 'old' oil . . . to 'new' oil."

Sawhill then announced the immediate creation of a special task force to investigate and he listed the five types of violations they were to examine—none of which included impermissable pricing hikes between the paper firms in the chains.

However, FEA officials apparently forgot about the old to new oil violations and launched a curious investigation into the daisy-chains. The Agency turned Sawhill's "Project Escalator" into the "Utilities Project" and instructed investigators to audit only for pricing violations and refused to enact FEA regulations which specifically prohibited the paper sales. Under these restrictions, the auditors were unable to make criminal cases; the individual firms in the chain usually increased the price by an allowable amount each time the paper-work was passed from one firm in the chain to the next. Indeed, this is what the president of Tauber Oil—one of the main offenders—meant when he recently testified in the Florida Power case that such paper sales were both "common and legal" in the oil industry. As field investigators saw the chains and realized that pricing regulations did not prohibit them, they tried to get National Office to accept conspiracy cases against the firms in the chains. Strangely, National Office rejected this logical approach and insisted that the cases be pursued piece-meal for pricing violations. Against overwhelming evidence National Office was thus able to avoid finding significant criminal activity and was able to discontinue the "Utilities Project."

(3) The many field auditors and attorneys I have talked with that worked on the daisy-chain investigations all agree that virtually every utility in the country paid wildly inflated prices because of these chains. Each state they have documented incredible chains and have received only interference from National Office. Some have resigned, like Jerome Von Tempske and Dale Kuehn, charging a cover-up.

Many other former and present employees strongly believe that their investigations were deliberately sabotaged. Deputy Secretary O'Leary acknowledged this fact to a New York Times reporter: "We have fifteen different people around the country with Mr. McNeff's perspective, saying they need more resources and that there are conspiracies in Washington not to regulate."

(4) Certain key enforcement officials, who first served under William Simon and Frank Zarb, have consistently made a mockery of the FEA's and the DOE's investigations of the oil companies.

William Simon has recently written that his primary objective as FEA Administrator was to protect the oil companies and insure the destruction of the FEA. Simon was outraged when the life of the FEA was extended, but his close friend Frank Zarb, assured him that "At least we're keeping all the garbage in on place so we can control it rather than distribute it all over government."

(5) The general consensus among field attorneys in the crucial Region VI is that the hightly-touted overcharge cases against the majors area sham; their investigations have been so badly emasculated by Washington that the cases, if brought to trial, could never be won. At least one head Special Counsel attorney has angrily resigned charging deliberate sabotage of these major cases.

(6) If the Department really desired to expose the major oil companies' involvement in criminal conspiracies, sufficient evidence exists. The cosmetic changes made in the crude oil reseller investigations will yield indictments against only small firms.

Also, there appears no interest in reviving the aborted daisy-chain investigations—as late as January 6, 1979, I tried unsuccessfully to convince Gaynel Methvin, Bob Gossin, Jerone Wiener, and Bonn Phillips to act on incriminating daisy-chain evidence I had uncovered in some deadfiles.

(7) No matter what the true reason is for the FEA's and DOE's failure to police the oil industry, one fact is certain: confronted by massive, pervasive, continuing frauds these criminal investigations could not have been more effectively limited if they had been subcontracted to the American Petroleum Institute.

And the Justice Department has continued to stand strangely silent on the sidelines.

RECOMMENDATION

I believe that Congress should appoint a Special Prosecutor of unquestioned integrity, such as Archibold Cox, to investigate and prosecute these oil conspiracies. Only by such an action can the public be assured that their government really wants to protect them from criminal schemes by the oil industry.

Mr. DINGELL. Mr. McNeff, the committee is thankful for your helpful comments. I observed that Mr. Hallman and Mr. Buchanan are there. What comments would you gentlemen like to make?

STATEMENT OF F. EDWIN HALLMAN, JR.

Mr. HALLMAN. Mr. Chairman, if I can lay a little groundwork for the basis for my appearance here, I would like to.

In the first place, I am now engaged in the private practice of law. I was contacted by the committee during the latter part of last week. I did not have time to prepare a written statement, and in fact I really prefer to not prepare a written statement.

The last time I appeared before this committee I believe was in 1976. I do not remember the date. At that time, in response to a question from the chairman, I indicated that it was my professional opinion, legal opinion, that in fact 5-year statutes of limitations problems were present with regard to DOE criminal cases.

Subsequent to that meeting, and prior to the meeting, or to the hearing, in fact Mr. Gorman Smith, who was then Assistant Administrator for Regulatory Programs, waived in front of me an opinion from the Office of General Counsel asserting that there was no 5-year statute problem with regard to DOE criminal cases.

Prior to that time, and since that time, I have respectfully disagreed with the Office of General Counsel about the handling of several cases within region 4, and within the Southeast District of the Department of Energy.

I would like to categorically state that the basis for my disagreement has always been on factual and legal grounds. I have attempted to preclude any further growth of that type of encounter into the area of personalities and this sort of thing.

I have had difficulties with individuals within the Office of General Counsel who in my opinion were not professionally capable to make the decisions they were making. In very substantial matters.

I have recorded in the files, as I think the committee has copies of, I have recorded my objections, and the reason that I prefer not to make a statement is I would like to refer the committee to those files because I think those files are the best statement I could possibly make.

I have seen, during my 3 years as regional counsel, and then as chief enforcement attorney—I have seen abortive attempts, organized and reorganized and reorganized, in an attempt to form some system whereby potentially strong and possibly very significant cases could be referred to the Department of Justice, and could be prosecuted.

I have seen cases delayed for months and years. I have seen extreme problems that I in fact could not deal with, other than to register my objections.

In my position, I was not able to do more than I could. There were people in supervisory positions above me who were making these decisions. I may be wrong in my opinions, but I was never, with regard to one case in particular—I was never given the opportunity to sit down with persons who disagreed with me, as I requested, and to discuss the law and the facts concerning the case, and have them prove to me—and I think I had the right to have them prove to me—that my position in a particular case was wrong, and that it was in fact wrong to not promote that case criminally.

As I testified in response to questions, I would like guidance from counsel for the committee and from the committee as to what I

should answer and should not answer, because as a general course of activity, cases that I was involved in and referred to the Department of Justice, I lost contact with, even though I requested that I be informed concerning one particular case that I worked on for 2½ years—I was not informed as to the disposition of that case. Therefore, I don't know whether or not in particular instances, I do not know, except based upon what I have been told by my supervisors, as to whether or not criminal action was taken, is taken, is being taken, or is contemplated.

I have been told certain things. I will respond to any questions about those particular matters as appropriate.

Thank you.

Mr. DINGELL. Thank you very much.

Mr. Buchanan?

STATEMENT OF HERBERT F. BUCHANAN

Mr. BUCHANAN. Mr. Chairman, I have no prepared statement. As I indicated, I was contacted during my vacation and asked to appear here which I have done. I have no specific statement to make. I can give you a brief history of my involvement.

I came with the Federal Energy Administration as Area Manager of Houston Group 2, served in that capacity for approximately 6 months. I was promoted to the Assistant Director of Enforcement, or Compliance, as it was known at that time, and have served in that capacity for about 3 years, and currently I am the Deputy District Manager, Enforcement, Southwest District, located in Dallas, Tex.

I will be glad to answer any questions that I have knowledge of.

Mr. CONYERS. Mr. Chairman, could I ask the witness, in terms of elucidating a little bit more testimony, for him to make any remarks that support or corroborate the testimony of the two witnesses that he is appearing with.

Mr. DINGELL. I think that would be appropriate. But before that occurs, there are a couple of comments that need to be made by the Chair.

First, you are here by invitation of the committee and are not here as volunteers; is that correct?

Mr. BUCHANAN. Correct.

Mr. MCNEFF. Correct.

Mr. HALLMAN. Correct.

Mr. DINGELL. You have not solicited nor sought the opportunity to appear before the committee, but are here by invitation of the Chair; is that correct?

Mr. MCNEFF. That is correct.

Mr. BUCHANAN. That is correct.

Mr. HALLMAN. That is correct.

Mr. DINGELL. Now, gentlemen, I just call to the attention of each of you, and I want it in the record, for the purpose of serving notice on your superiors, whoever they might happen to be, or other officials inside the Federal Government, or outside that title 18, section 1505, very specifically deals with the prerogatives of the committee to receive testimony, and also very specifically deals with the protection of persons who appear as witnesses before a congressional committee, and deals specifically with the question of

interference with witnesses or any action which might be taken against them by reason of their appearance before a congressional committee.

I want it clearly understood that in the event that any untoward actions occur to any of you, as a result of your appearances here, before this committee, the Chair wishes to be notified forthwith, in order that the necessary actions by the Chair and the subcommittee might take place.

And we would be most happy to receive the testimony of anybody who communicates with you, either formally or informally, directly or indirectly, about your appearance here. I want that very clear.

You understand what I have said to you?

Mr. McNeff. Yes, sir.

Mr. Dingell. All right. We will try and make that clear to your superiors also.

Now, with the apologies to my dear friend, I recognize him.

Mr. Conyers. I thank you for making that emphasis, Mr. Chairman.

Could I ask Mr. Buchanan, in the light of Chairman Dingell's comments, to please elaborate on the nature of your experiences with the Department of Energy, and perhaps when it was named differently, and how your experiences may be consistent with those of the witnesses who are testifying at your immediate right.

Mr. Buchanan. Mr. McNeff has covered a lot of territory, has covered a lot of time. I think the only thing that I could say is that over a period of time, as we had a lot of reorganizations and a lot of changes in both FEA and all the way up through the DOE.

For instance, we have a lot of growing pains. When I first came to Houston there were only two area offices. Within a matter of less than 15 to 18 months, there were four area offices. Two of the area offices dealt mainly with the major refiners. One area office dealt with the NGL processing plants and certain small refiners. The other area office dealt with special investigations which at that time was limited I think to maybe one case, plus crude oil producers, plus other small refiners, and of course over the period of time as we completed cases we sent them forward to our regional office for review. They went from regional offices. If they had a precedent-setting problem with them, they went to the national office for review and then back from the national office to our region, back to our office.

Many of these cases were highly—they had a lot of technical issues in them. It took a substantial amount of time to get clarification, in some of the cases it did take substantial time to get them back.

We also had a problem with personnel, in hiring new people, as was indicated this morning in testimony—we had a learning process. We had to send these people through a training period where we tried to give them a little bit of indoctrination of the oil industry. And you do have a large turnover in auditors.

So it has become a training process as well as a learning process.

Mr. Dingell. The Chair recognizes counsel for purposes of asking questions.

Mr. BARRETT. Mr. Buchanan, are you aware of any FEA field employee who was disciplined because he made a direct contact with the U.S. attorney's office?

Mr. BUCHANAN. Pardon me? I didn't——

Mr. BARRETT. Are you aware of any FEA field employee being disciplined because he had made a direct contact with the U.S. attorney's office rather than going through headquarters?

Mr. BUCHANAN. Probably it was Joe McNeff.

Mr. BARRETT. Mr. McNeff, do you know of any FEA field employee being disciplined?

Mr. MCNEFF. To answer your question, I don't know specifically. I know that the general prohibition was, and we were told this repeatedly, that we could not talk to any assistant U.S. attorney. We had to go always through our national office. We also couldn't talk with the IRS people in the field. We couldn't talk to the SEC people or any other agency, even if they had related cases or could help us out. We couldn't talk to the postal inspector about mail fraud. That was a strict prohibition.

I know I was called, after I tried to talk to some friends of mine in the U.S. attorney's office in Dallas, because some of the cases happened in Dallas, and I was called and told not to ever do that again.

Some friends of mine were called within the DOE by Paul Bloom saying that they were not to talk to the assistant U.S. attorneys either under any circumstances. But as far as actually being punished, I am not sure, Mr. Barrett.

Mr. DINGELL. You said that this was the instruction. Was this instruction in writing? Was it delivered orally? How was it made available to you?

Mr. MCNEFF. Gentlemen, it was the set policy of the Department the whole time that I have been there and still is.

Mr. DINGELL. It still is the policy?

Mr. MCNEFF. As far as I know, no individuals are supposed to contact the other agencies in the field.

Now, if that has changed, they haven't told me about it. I wouldn't be surprised if they have not told me.

Mr. DINGELL. How is this policy disseminated?

Mr. MCNEFF. I was told that by Tom Humphries, Assistant General Counsel for Compliance. Mainly by Mr. Humphries, I suppose, although it was relayed to me whenever we talked about it in Washington.

Mr. DINGELL. Is that the same policy as applies to other Government agencies?

Mr. MCNEFF. Oh, yes.

Mr. DINGELL. I mean, do other Government agencies have the requirement that field personnel may not speak to the Department of Justice personnel, or IRS personnel, about matters on which they work?

Mr. MCNEFF. You know, I really don't know for sure. But I get the feeling, and this is the way criminal investigations work in reality—you develop an informal network, we develop friends in the IRS, or the SEC, and they help you and you help them, and you work together. This is the way most criminal prosecutions work.

And I think other agencies work together. They certainly should. It is the only way to get anything done, to trade information.

Mr. DINGELL. I don't quarrel on the point you make. I am just curious whether other agencies have that same policy that DOE has.

Mr. MCNEFF. I am not qualified to answer that, Mr. Chairman.

Mr. DINGELL. Thank you.

Counsel?

Mr. BARRETT. Mr. Buchanan, which is easier to perform, a certification or a pricing audit?

Mr. BUCHANAN. A certification audit.

Mr. BARRETT. And did the Houston office back in 1976 make a determination that certification audits were the way to go on these crude reseller cases and try to convince Washington?

Mr. BUCHANAN. In looking at the crude oil resellers back in the early part of 1976, we felt that the first one that we should do would be a small one, one that had very few transactions, one that we could look at the total overall picture.

That we did in Coral. We looked at a number of transactions. We took what our findings were up to Washington and discussed it with people in Washington, at the national office.

Mr. BARRETT. Some time about July or August of 1976?

Mr. BUCHANAN. It was in June or July, I believe, of 1976.

Mr. BARRETT. And at that point, what were the recommendations of the Washington office?

Mr. BUCHANAN. The recommendations at that time were that they were going to study the problem, they were going to look at the issues, and that they would get back to us on the resolution.

Mr. BARRETT. When did they get back to you?

Mr. BUCHANAN. Well, there was a meeting held possibly about, it seems to me it was maybe 6 weeks later, maybe 3 months later, in the Dallas regional office, to discuss it further. It was discussed at that meeting, and then they went back. I am not sure if we ever really did get an answer.

Mr. BARRETT. In essence you are not sure that you ever got specific guidance?

Mr. BUCHANAN. No.

Mr. BARRETT. Are you aware of a refinery having been bought for cash? Did one of your auditors come and advise you that someone might very well be having some interesting business going on because he was able to pay for a refinery out of cash?

Mr. BUCHANAN. We have an engineer who works in the Houston office and does the technical reviews of the refineries at the direction of the national office. This particular engineer did a technical review at a refinery, and he came back and asked if we had an audit going on of this particular company. He said, if you don't, you should have. He said, there is no one builds a refinery like that one, and pays cash for it.

Mr. BARRETT. And this particular refinery was owned by Uni?

Mr. BUCHANAN. Yes, sir, it was.

Mr. BARRETT. When Mr. Stockton and I came to Houston in June of 1978, we met with you and with a number of your people. At that time, do you recall telling us at that time that DOE Washington had indicated they were winding down on the reseller cases?

Mr. BUCHANAN. Do I remember who telling?

Mr. BARRETT. Do you remember telling us that your instructions from Washington were that reseller cases were going to be wound down?

Mr. BUCHANAN. According to the work plan that we had, our reseller audits were winding down.

Mr. BARRETT. They are no longer being wound down. They are in fact being made the subject of an extensive investigation.

Mr. BUCHANAN. That is correct.

Mr. BARRETT. That has been since the subcommittee staff visits and the initiation of the subcommittee investigation; is that not right?

Mr. BUCHANAN. That is correct.

Mr. BARRETT. Mr. McNeff, can I just ask you, did you find a locked and abandoned file cabinet in Dallas with a whole lot of daisy chain investigations in that cabinet that nobody had done anything about for some time?

Mr. MCNEFF. Yes, sir, I did.

Mr. BARRETT. Could you expand on that a little bit?

Mr. MCNEFF. After I was transferred to Dallas, for a while I wasn't allowed to work on any criminal cases at all. But then finally I was allowed to work on one criminal case, solely for the purpose of referring it to the Department of Justice, and I looked at it.

We had a very weak violation on that case. It was more of a pricing violation, criminal pricing violation, than it was a daisy chain.

I started looking at the files, and as I suspected, I saw all the old familiar daisy chain people, dozens and dozens of them. I started looking at what we had there. And I found more incriminating evidence where we showed, I don't know how many chains, a hundred chains, within that one case. And these were in a file cabinet that had been put up, nobody looked at in a year or two.

And then I started looking at some other file cabinets which nobody looked at for 2 or 3 years, that were the utilities investigations, and as soon as the director of enforcement, Dallas, found out I was looking at the utility investigations, I was immediately required to give back all the files that I was looking at.

But I saw enough in there that clearly showed a lot more chains. But that has been the extent of it after that.

Mr. BARRETT. My question is addressed to the witnesses at the table. It is my understanding of the situation that what occurs is that the field offices in fact go out and investigate and develop facts, present a fairly decent case, and that the materials are sent forward to Washington, where they fall into some sort of an abyss or a bottomless pit. Some cases you never hear about again, and sometimes you hear about the matters because you have got to do more investigation. And then you send it up again. And it comes back down for further investigation.

Is my perception incorrect?

Mr. MCNEFF. A little. Not too much. But you are assuming, one of the major defenses of certain officials of the agency is that they haven't rejected that many criminal cases that have been sent up

from the field, although the ones they have rejected over the years and kept sending back down are really blatant cases.

But what has happened is they instructed the auditors to only look for pricing violations between the members and the chain. And so while all the evidence is there, and while they have to fit it together, any attempts by the auditors or investigators or attorneys to try to convince Washington to look at the whole chain and say, look how all the pieces we have gathered fit, they say no, that is not your problem, only pricing audits, and you haven't showed a violation of our pricing violations and so you have no case.

So the evidence is there. It is in the file cabinets. And it is massive. But the cases are not put together in a conspiracy.

Mr. BARRETT. My question is, Do the field offices do a good job of getting the stuff together and worked up, and then the material is sent to Washington where it goes nowhere?

Mr. Hallman, could you comment on that perhaps?

Mr. HALLMAN. I wanted to elaborate a little bit about the history of FEA and DOE, and the whole business of criminal cases.

I came with the agency in December of 1975. And at that time, and until I guess within the last 1½ or 2 years, the position was taken by the agency, and this may sound somewhat frivolous, but I do not intend it this way—the position was taken that basically you could not violate FEA regulations in a criminal matter.

There is a memorandum on file from the then head of the enforcement arm of FEA which he said we will not hire criminal investigators to do criminal investigations. And that was sort of like the telegram I got once saying that there would be a fire drill in headquarters.

I could not believe that it had been put on paper to the extent that it had. But that was the problem faced to some extent by the current administration. A total refusal to look at criminal cases or to accept the fact that they were there.

Then, subsequent to that time, largely due to pressure from Congress and other reasons, the Department of Energy has been faced with the problem of trying to perfect cases concerning acts that occurred at the end of 1973 and the beginning of 1974.

And in my opinion, you have had a lot of irrational and wrong responses to the needs, by headquarters. Not enough trust in the field, not enough trust in the field lawyer to say, Mr. Lawyer, this is your case, this is your responsibility, you either carry it through or you don't. And if you don't, it is your problem and we will hold you accountable.

You look at a case now, you cannot lodge accountability. Accountability is destroyed by the 20 levels of review, and the creation of special counsel which moved all of my supervisory personnel into completely different elements of the agency, and then a whole new group of people came in to perform the work of reviewing these cases.

And my basic problem as a lawyer has been that the people in charge of reviewing our criminal cases prior to the time of the creation of Mr. Weiner's shop, and the creation of some criminal expertise there, although that whole system in my opinion is not without problems, but prior to that time the lawyers reviewing my cases, it is my understanding and it is a credible understanding, I

believe, had very little, if no, criminal background. And this to me was offensive to me as a lawyer. And I always had continual problems with that.

But the history of the whole program is such that I now, as a private citizen, look at it and say, for God's sake, somebody either do away with it or do what we can and go on to better things because the false economy of what the Department of Energy is doing now is incredible to my way of thinking.

But I feel uncomfortable in totally condemning the system, and the Department of Energy personnel who were there right now because largely they inherited problems. I don't agree with the way they are handling them now. And I don't agree with the way they have handled them historically.

But I think historical problems were stronger than they are now.

Mr. BARRETT. In the historical context—if I may interrupt you—you are familiar with the *Citmoco* case, are you not?

Mr. HALLMAN. Yes.

Mr. BARRETT. As I understand it, that involved alleged violations in late 1973 and early 1974.

Mr. HALLMAN. Yes; that is right.

Mr. BARRETT. Could you give us the chronology of what you did on that case, how it was worked up, when your reports were filed, and so on?

Mr. HALLMAN. I guess probably that case to me would be the greatest example of a response to, I think, and I am not sure I will pronounce his name right, Congressman Sensenbrenner, who asked about the completeness of case files that comes forth from the field. This case was a case that I worked on for 2½ years with one investigator, and I would ascertain and I think be able to prove that he was probably the most competent investigator with the agency, a man by the name of Jim Grimes, who has since left to go to work for the Department of Agriculture.

But in May of 1978, I think it was May the 8th of 1978, we sent forward to the national office a report that was 281 pages long with 502 exhibits, and with a 100 page, 60 or 70 pages of which was legal analysis, and we took the position that this case showed strong possibilities of criminal conspiracy. We also took the position that the case would die through the statute of limitations in the early part of 1979, and we took the position that something ought to be done fairly quickly.

Subsequent to that time, I believe on June 29 the Office of General Counsel sent forward a referral to the Department of Justice, and I requested on numerous occasions to receive a copy of that referral, and I believe around June 15 to June 20 of 1978 I got a copy of the referral.

I then, on I believe it was July 28, sent up a memorandum of objections to the referral as it went to the Department of Justice. The strongest basis for my objection was that in that referral, the Office of General Counsel took the position that region 48—and the position stated something to this effect: The Department of Energy takes the position, the region 4 position, that elements of conspiracy are in this case erroneous, and I objected to that position on two grounds: First, the ground that I as regional counsel in region 4 enforcement are parts of the Department of Energy, and that in

fact it was an incorrect statement to the Office of General Counsel to state that as being the position of the Department of Energy.

The second ground of my position was that there was no basis for the Office of General Counsel's position that in fact our position was erroneous, and I requested that this be reviewed, and then I again stated some of the factual emphases that I thought were present in the referral.

I then got a response which I feel, and in my opinion, and I think anyone that reads it would feel, was more or less of a personal attack upon me and did not address the issues involved. It was written by a lawyer who had been with the agency I believe approximately a month when she wrote the letter, who I believe according to my information, had no criminal experience, and I took this very seriously.

I then requested a meeting with my supervisor at that time, concerning this problem. This was all during the latter part of July and the early part of August of 1978.

I then continued to request this meeting, because I felt that it was urgent that if my position was correct, that in fact this be brought to the attention of the Department of Justice, because if the Department of Justice gets a referral which says the regional position is erroneous, you have got an obvious problem if you are taking the position that surely they will see through the OGC position, and agree with you. I then requested this meeting on numerous occasions. I was told at one time that Tom Humphrey, who was involved in disagreeing with me, had to take a 3-week vacation and he was an indispensable party to the conversation and should be allowed to have that vacation. I was then told Diana Clark, who disagreed with me and who was involved in the investigation, had to take a 5-week vacation and that she was indispensable to the conversation and it would have to be postponed because of that.

I then in surprise inquired as to how she could have 5 weeks of vacation, since she had only been with the agency for several months, and the response was that she had amassed enough compensatory time working on the *Citmoco* case that she had this much time and therefore was allowed to take the time off.

The bottom line was that in November of 1978, I, together with a lawyer that I had hired out of a district attorney's office and who had worked on the case extensively with me, and who in fact drew a chart which should be a part of the papers you have, and I met in Washington with the Office of General Counsel to discuss our position.

It is my stated opinion, based on the conversation during that meeting, that no one ever addressed the issues that we wished to have addressed, and no one ever refuted legally or factually our position that in fact this case had substantial evidence of criminal conspiracy, and substantial evidence of possible crimes.

We had wished to look at some activity which took place in the Department of Commerce concerning this case, and we were refused the opportunity to do that.

Mr. BARRETT. That was in October of 1977 you asked to interview some people at the Department of Commerce?

Mr. HALLMAN. Yes, and initially we were instructed subsequent to that meeting I believe someone in the Office of General Council, it may have been Tom Humphrey, was instructed to work out a procedure whereby we could conduct certain interviews and obtain certain evidence from the Department of Commerce. That was never done, and one thing led to another. There was some litigation going on in Mobile related to this case in which Citmoco had used to have us enjoined from further activity in several other positions of Citmoco, but basically what happened is that we were always refused, and we were not allowed to go to the Department of Commerce to obtain this evidence.

One of the most difficult things for me to accept was the position presented to me by the Office of General Counsel and the Department of Justice by lawyers working on the Citmoco civil litigation that we had a sister agency obligation, and that the Department of Energy was not the proper party to investigate the Department of Commerce, and that we had to have an unified "one for one and all for all" position before the court and before the public.

My response to that was that I didn't agree with the sister agency theory. I thought that we should obtain all the facts, wherever the facts lie, and wherever the leads go.

Mr. BARRETT. Essentially, you were stopped from conducting an investigation that might have involved people at the Department of Commerce?

Mr. HALLMAN. Yes, and there had been some grand jury activity in New York. There had been some review of the situation, this committee will recall, from the standpoint of alleged political influence, by Mr. Ed Carey's brother when he was then Congressman. That activity in New York was alleged to have covered the Commerce activity, and therefore there was no need to go further, but on the face of all the documents, and as clearly disclosed, none or virtually none of the key people within the Department of Commerce were ever interviewed, were ever called before the grand jury in that New York inquiry, and that inquiry was particularly related to the allegation of political influence and was prior to the amassing of all of the evidence that we came up with subsequent to our investigation of this matter.

Mr. BARRETT. Could I ask, did you come across evidence in your Citmoco investigation that a vice president of a major oil company had received consulting contract payments, one before he left his oil company and one after he left?

Mr. HALLMAN. Yes. In fact, one of the key elements of our case we felt were the allocation violations, and the violations concerned a diversion of a substantial amount of crude oil from a major refiner, a major oil company.

Mr. BARRETT. This major oil company was Gulf Oil Co?

Mr. HALLMAN. Yes.

Mr. BARRETT. They would have been entitled under the EPAA to receive this oil?

Mr. HALLMAN. They did not in fact receive the crude, and in fact we have testimony that indicates this crude was not replaced. It was of such a fine quality that it could not be replaced, so they could not replace it in kind, and one of our big questions was why they never objected. The investigation led to a disclosure from the

books of Citmoco of two entries of $75,000 payments to the vice president of crude for Gulf Oil Co. One of those payments was labeled for the Borko transaction, which involves the sale of this crude to a Bahamian-located corporation by the name of Borko, which is wholly owned domestically and 65 percent I believe owned by Nepco, the way this all went, but we determined that that in fact was—well, that in fact was what was on the books of Citmoco.

Mr. GORE. Will counsel yield?

Mr. BARRETT. Yes, I have finished my questions at this point.

Mr. DINGELL. The Chair will recognize my colleague for questions. The Chair is going to recognize first my colleague, cochairman, Mr. Conyers. I am sure he will yield to the gentleman from Tennessee if he is so minded. The gentleman from Michigan yields to the gentleman from Tennessee. The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you very much.

I want to briefly follow up on counsel's questions. I very much appreciate my colleague from Michigan's yielding.

I want to follow up on the groundwork that has been laid by counsel. Mr. Hallman, you were involved in the investigation of one of these reseller cases, a case that cost the people who ultimately bought the oil a good deal of money, and the evidence included the allegation, which you believe to be founded, that $150,000 was paid personally to a vice president of Gulf Oil Co.; is that correct?

Mr. HALLMAN. Yes.

Mr. GORE. Was this case prosecuted?

Mr. HALLMAN. I do not know.

Mr. GORE. I think the evidence will show that the statute of limitations ran on this case.

Mr. HALLMAN. I have been informed by both representatives from the Department of Justice and a representative of the Office of General Counsel that it was not prosecuted criminally. I have never been informed in writing as to that disposition. I sent out a request during, I believe, October of 1978 that I be given copies of and be informed of the disposition of this case, which was referred to by one official of the Office of General Counsel as Hallman's freedom of information request, because I phrased it and wrote it in those terms, and I have not received a response.

I received a very quick partial response which indicated that other information would be coming forward, but since that time I have been informed of no activity in that case, and I do not know what has happened to either the civil or the criminal case.

Mr. GORE. I think it is fairly incredible that you have a case where the vice president of one of the largest oil companies in the country is receiving $150,000 in a scheme that results in overcharging the American public, and no action is taken. We have another case involving Mobil interrupting its traditional patterns of delivery and inserting a reseller in the chain. The pipeline is still there. The oil still moves along the same pipeline, but the paper chain now has a reseller in it, and the old oil becomes new oil. The American people are overcharged by millions of dollars, and no action is taken in that case either.

Mr. McNeff, how many cases, how many major oil companies, in your opinion, are involved in these schemes?

Mr. McNeff. I would say that almost all of them are, if not all of them. There are some that I have not seen, some of the top seven. I have seen maybe what you consider the second level, 10 or 15 of them, and I have seen maybe 4 or 5 out of say 7 majors actually doing this. Now I have no reason to doubt that the rest of them might not be doing it also.

It is just while I had the brief opportunity to see those files I did not see the other ones, but clearly, clearly the majors knew exactly what was happening and aided the resellers. We saw in some cases—it was very hard, very hard to prove, this is what Mr. Canales was talking about, it is hard to prove that the major oil companies got a kickback, say, for running the oil through these people, although clearly they knew exactly what they were doing. In one case we saw a very large refinery who also had crude oil, and he was running it through a smaller crude oil company, and we happened to see, found out about through the Bahamas, the crude oil company subsidiary in the Bahamas was kicking back to the refinery through subsidiaries, so it is very hard to trace the money.

Mr. Gore. Yes.

Mr. McNeff. But clearly they had to know exactly what was happening in the industry.

Mr. Gore. This Gulf example I think is very interesting. Let's look at the *Mobil Carbonit* case. In that instance the officers of Carbonit, this reseller that sprang up in order to convert old oil to new oil, include former officials of Mobil, Exxon, and Texaco; is that correct?

Mr. McNeff. I have heard that. That was really starting to be developed after I was taken off the case. I could mention one thing about the *Citmoco* case and that individual from Gulf. We later found out, I subsequently found out I think talking with the Atlanta office one of the cases we had been investigating, Summit, one of their vice presidents was this same individual. After he took the bribes and stuff while he was at Gulf he left and then became vice president of one of the companies we were investigating, but I had no idea it was the same individual or his record or the FEA had talked to him or anything else.

Mr. Gore. Would all three of you gentlemen agree with the statement that these schemes are continuing to this day?

Mr. McNeff. I would.

Mr. Gore. You would agree?

Mr. McNeff. Yes, sir.

Mr. Gore. Would the other two gentlemen agree?

Mr. Hallman. I would agree on probability grounds. I think it is a very strong possibility.

Mr. Gore. Mr. Buchanan?

Mr. Buchanan. There is a probability that they could continue.

Mr. Gore. So right now while the American people are justifiably angry about the price going up so rapidly, these schemes are continuing. The evidence is there. It is in the files. The cases haven't been prosecuted. Major oil companies are involved, and nothing is being done. I simply hope that the Department of

Energy and the administration generally pay close attention to these hearings, and I hope that they take up your suggestion, Mr. McNeff, and appoint a special prosecutor. This may indeed be the largest criminal conspiracy in our history involving billions of dollars, and it may be continuing to this day.

Thank you, Mr. Chairman.

Mr. DINGELL. The time of the gentleman has expired. The Chair recognizes our colleague, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Following up on the questions of the gentleman from Tennessee, we heard this morning in testimony of two prosecutors from the U.S. Department of Justice that there was no concerted attempt to refer any of these cases to the Justice Department for prosecution. One prosecutor found out about a daisy chain operation by a citizen bringing a newspaper article in. The second prosecutor was home watching a television program and found out that something might be going on with an illegal refiller scheme. My question is, have any of you gentlemen received any standard operating procedure for referral of cases to the Department of Justice, when in your opinion there was sufficient evidence to warrant a criminal prosecution?

Mr. HALLMAN. I do not know if this would be the response. I mean, I don't know if this would be a response to your question because I am not sure I understand the question. We have been instructed to not—when I was in the position I was instructed to not—directly contact the Department of Justice about any case, that it was to be reviewed by the national office, and that there was in fact an understanding between the Department of Justice and the Department of Energy in OGC as to how this procedure was to be followed.

I personally objected and I know a lot of field counsel objected to that procedure. We did not object to control in overseeing and review, and I might add expeditious review of our activities, but we disagreed with a lot of the decisions of procedures concerning particular cases.

We disagreed with approach. We were told on occasion to withdraw our civil subpenas, because it would offend the Department of Justice's activity. We would then have contact from the Department of Justice lawyer, after he got the case, and he would say, "Why in the blazes did you withdraw your civil subpenas?" and this sort of situation, I would say, continues. With all due respect to the Department of Justice, there seems to be a continuing, and I may be wrong, this may be another one of these alleged paranoid responses, based on my experience, but I have viewed over and over again our cases given to lawyers who were 2 weeks out of law school, which is the case with regard to a case that was referred shortly after I became regional counsel concerning an official of the Atlanta office, you are all well aware of that case.

I personally think that is the most offensive case in the history of my office that has not been pursued by the Department of Justice, and I can't comment as to the reasons why it has not, but during my career, I believe about a year and a half after that, I went to Washington to assist the Department of Justice in that matter. I walked into the office of a young lady who had been with the Department for 2 weeks, who had the old file in front of her

and was saying, "I don't see anything here," and we inquired as to what happened to the most recent referral, and she went over and pulled it out of her file cabinet and she said, "You mean this? I was told this is background concerning this case."

They lost the referral letter from the Department of Energy or FEA to the Department of Justice. The OGC lost it. We had to supply that to show in fact the case was ever sent to the Department of Justice, and that sort of activity is very frightening concerning any of our cases, but we in the field were instructed never to make direct contact, and there was some arguable support for that. I could accept that from the standpoint of wanting consistency and wanting things to be reviewed by, say, the fraud section or the economic litigation section of the Department of Justice because of the new area of law and everything, but what I couldn't accept was the slowness of the process and the lack of even what I felt was a basic consideration of our opinions in the field, and we had worked with the case for years and knew the substance of the case and had opinions about how the case ought to be pursued.

Mr. SENSENBRENNER. Did you ever receive any written instructions from your superior on what criteria were to be followed when, in your opinion, a case should be sent to Washington for referral to the Department of Justice for prosecution?

Mr. HALLMAN. Well, when I attempt to answer that question, I can't recall specific documents. I can say there are such instruction documents within our files. One approach by the current Office of Special Investigations of General Counsel is to attempt to give instructions to the field, specific instructions about how matters are to be referred and that sort of thing. Prior to the initiation of that office it was catch as catch can.

Mr. SENSENBRENNER. How were the determinations made on which cases should be referred? Was it by a ouija board?

Mr. HALLMAN. I don't know.

Mr. SENSENBRENNER. A surf board?

Mr. HALLMAN. I don't know. We sent up a case that involved a filling station and it involved a violation of a thousand and one, and it was a picky, little case. We sent it up and we said,

> Hey, look, guys, we think we ought to be allowed to just go to the U.S. attorney and say, "let's give this guy a fine and give him a year's probation," but it will be good for people within his little association, within his crowd of individuals to know about this case, 'and he has already agreed. He admitted that he did it and he agreed to the criminal act.

That case was kept. That case was kept and we never heard from it again, and I have yet to hear from it as of May 5, 1978, and that basically was what happened to the small ones. With regard to the large ones, I have never heard what happened in the *Citmoco* case, so that is the other example I guess I would use.

Mr. SENSENBRENNER. My last question involves the Department of Energy's response to the GAO investigation, where they take exception to the GAO recommendations that cases be referred to the Department of Justice because it might hinder a Department of Energy civil investigation into violations of the regulations. Do you know of any case, either of the three of you, that was not turned over to the Department of Justice because of Department of

Energy opposition to any allegations of a so-called parallel investigation?

Mr. BUCHANAN. I don't know of any.

Mr. HALLMAN. I don't know of any.

Mr. MCNEFF. No.

Mr. HALLMAN. I might state that would be the sort of decision that would be made in Washington and about which I believe we wouldn't be informed.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. DINGELL. The Chair thanks the gentleman. The Chair recognizes the gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman. This is very disturbing testimony. In a matter of an hour we have implicated the Department of Energy, the Department of Justice, and the Department of Commerce. I have a question for you, Mr. Hallman. Very simply, with your experience and background within the agency and with the responsibility that you had, and the reaction that you got to certain actions you took, would you say that there was an effort on the part of your higher-ups within the Department of Energy for a coverup?

Mr. HALLMAN. If I can—well, I will just respond to the question the way I have to. I am the kind of person that I have personal beliefs based on supposition and innuendo. I have seen no evidence of that sort of thing. I see some very strange, or I have seen some very strange decisions made that I have questioned. I have been bothered when I have gone into my superior's office, and he has said concerning the *Citmoco* case, research the applicability of the Alabama long-arm statute, and any lawyer that has a basic history in civil procedure knows that a State long-arm statute does not apply to a Federal criminal or Federal civil case.

That to me is either a very naive question or a strange question, and from whence I know not. I don't know.

Mr. SYNAR. Let me address this same question to Mr. McNeff. To your best knowledge based on your experience and background, having dealt with this issue, and particularly the reaction you got from your action, would you say that there was a coverup within the Department of Energy concerning the daisy chain affair?

Mr. MCNEFF. Oh, yes, I strongly believe that, without any doubts.

Mr. SYNAR. Let me take that one step further. Are the Department of Energy and officials under the General Counsel's office in collusion with the oil companies, independent and major, as well as other attorneys on the other side to avoid the types of prosecutions we are talking about?

Mr. MCNEFF. If I had the time, I think as a prosecutor I could present enough direct and circumstantial evidence that I could get a jury to convict the oil companies and certain individuals in the Government of conspiracy, yes, I believe that. I don't say that lightly either. We were hired, many of us, with criminal backgrounds to make conspiracy cases.

Mr. DINGELL. Excuse me, Mr. McNeff, you mean experience in criminal law, not criminal background?

Mr. MCNEFF. I am sorry, Mr. Chairman.

Mr. DINGELL. I don't want the record to stand with that. Am I correct in my understanding?

Mr. MCNEFF. I am sorry, yes, sir.

Mr. DINGELL. I thank you.

Mr. MCNEFF. But we were—we do have several people that have alleged this in the past, criminal investigators have had criminal backgrounds, and we were hired to make conspiracy cases which are to be made and which I have made against certain oil companies. I don't think there is any doubt about that now, and you do it by the direct evidence, but conspiracy cases have to be made by circumstantial cases also, and some of the direct proof is lacking, but I think the cases as a whole using both direct and circumstantial evidence can be made.

Mr. SYNAR. Let me take this to the final step, then. In your own testimony, due to the efforts of the major oil companies in setting up a daisy chain prior to refining and a daisy chain after the refinery process, the major oil companies have, in your terms, ripped off the American public by selling utilities fuel at inflated prices, all utilities in your own testimony. Now they being the utilities and final purchasers and being aware of what the going rate for fuel is, let's say at 18 cents a gallon and say they are buying it at 54 cents a gallon, then there could be a case made that not only DOE, and the oil companies, but the final purchasers themselves, the utilities, turned blind eyes to the fact that this operation was going on.

Mr. MCNEFF. That is definitely true. We have got evidence some of the utilities set up their own purchasing arm which sold it to the utilities and they jacked up the price before they sold it to themselves and they bought from a lot of other people who were engaged in daisy chain. I think some of the utilities, while they knew what was going on, I don't necessarily think they are all like the *Florida Power* case where somebody took a bribe, it may be this was the only way they could get fuel because the majors then refused to sell it to them directly and insisted on going through these daisy chains, so it may be that while they knew what was going on, they may not have been taking kickbacks, maybe that was the only way they could get the fuel to buy it from the daisy chains.

Mr. SYNAR. One final question, if I could, Mr. Chairman. We have just developed a theory here that started with the DOE turning a blind eye, with possible collusion with the oil companies, with the final purchaser in many cases being the utilities, turning a blind eye. We are talking about a massive network over the Nation, with different areas and different utilities and different companies and different resellers, and you are telling me not one person within this whole nationwide chain stood up and said, "Something is going wrong"?

Mr. MCNEFF. The president of Florida Power just came out, not the one that took a bribe, but the one that was the president when it came out, said that—I have got newspaper articles. He said, "If we were overcharged," he strongly believed based on what he had seen that utilities all over the country were overcharged. Several investigators like I mentioned earlier, Dale Kuehn and Jerry von

Tempske, who worked on the daisy chain, said that is exactly what they saw from the evidence in the files.

That is one of the most frustrating things, I think Mr. Hallman and Mr. Buchanan will agree and everybody else, when you try to tell people in the DEA and FEA about this, no one ever disagreed with you. No one said you are wrong, you are coming to the wrong conclusions about the evidence of the daisy chains. It was just, "I am sorry, we can't address that because we don't have the resources" or something, but there has never been anybody within the DOE or FEA trying to sit down and logically tell me that I was wrong with any of my conclusions. Maybe the final conclusion I am sure they disagreed with, but all the steps leading up to or any of the proof as the subcommittee staff has seen, it is all there.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes the committee cochairman, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Dingell.

I would like to, first of all, commend these witnesses who, after all, work for the Government. Happily two of the three of them are attorneys, and they are demonstrating to me, if there is any reason for the American people to believe in the Government, that these witnesses furnish some small amount of evidence, that they should continue to hope that we, chosen to govern in this great country, can perhaps get this matter set aright.

Gentlemen, you have my absolute admiration and commendation, and I join with the chairman of this subcommittee, Mr. Dingell, who is very concerned about anything untoward that may be said or done in connection with your continued service for your country and your Government.

I also want to say at this time that Peter Stockton and Michael Barrett, who serve on the staff of Chairman Dingell, I think really should be singled out for some commendation that they have not specifically enjoyed. It is clear to me that none of us would be here if they hadn't put in months of labor, talking with many of you, and some, like you, who dared not reveal their names. So it seems to me that these two committees are charged with an enormous responsibility that, quite frankly, I can't even begin to see where it is going to end.

I had no idea that we would be treated to these crude and unvarnished allegations of illegal activities, of criminal conduct, of fraud and duplicity that is moving in at least two sections of the Federal Government very clearly.

Let me get to the questions that I would put to you.

First of all, is there a need for resellers?

Obviously, this begins to raise a serious question. Where the big producers have their own refiners prechosen in most instances, it seems to me that under the limitations of the market that exists today, that a case could be made that these resellers frequently can be up to no good except to, as the phrase was used earlier, to coin money for their own advantage.

Would you just briefly give me your view on that, gentlemen?

Mr. BUCHANAN. That question has been raised many times, whether there was a need for the resellers. I think generally it has been agreed that those resellers that came on line after the oil

embargo was an addition in the chain that should not be there, and I know in many of the cases the consideration was that we would give them a zero margin, as far as profit was concerned, because there was no actual need for them being in that chain.

Mr. HALLMAN. I think added to that you can realize the credibility of that position when you look at factually what these new resellers did, sitting in motel rooms and calling one person who would supply them and another person who would buy from them, and this goes on over the country and the product stays where it is, and then it is ultimately moved across the street.

I think in given factual cases, the obvious illegal nature of what they were doing was present. The laissez-faire business should operate as much as it can, attitude of both FEA and DOE, and the marketplace has had a strong influence on our ability to get out there and do something about this.

The theory that technically there is no regulation that speaks to this practice, when you look at the whole basis for the EPA and the price and allocation regulations, implicit in that, in my opinion, is a prohibition against this sort of activity.

Mr. CONYERS. But there is a prohibition against reselling.

Mr. HALLMAN. Not against resellers but against certain activity conducted by resellers, the sort of activity that gave rise to the large increases in the numbers of resellers' problems, basically, what has been disclosed so far.

Mr. CONYERS. Thank you.

Attorney McNeff?

Mr. MCNEFF. Before the regulations started and, as Mr. Hallman said, the ones that came in, the great numbers, the 500 crude oil sellers and at least an equal number of daisy chain resellers, those are the problems. Before the regulations were started and there was some attempt to control the price of oil, there were traditional resellers, mainly either very small people. If a refinery need add a few hundred barrels, he would look around and find it for him. He took like a 5-cents-a-barrel profit, and that is traditional. There is no problem with those.

There was also some gatherers, also termed resellers, who would go up, go out and get oil from small leases, pick it up, and take it to a pipeline, and maybe charge 25 cents to 40 cents a barrel. So those types of resellers have a traditional function in the marketplace. All the rest of them that have caused this problem do not.

Mr. CONYERS. Now, if we have such laxity, misfeasance and malfeasance within the Department of Energy, especially in the enforcement area, where do we begin?

I will include the Department of Justice shortly, but right now I want to concentrate on the Department of Energy.

I mean we could make corrective recommendations in a report here, and I suppose that that would be tossed off with the same casualness that many other hearings of the Dingell subcommittee have already been discarded. We seem to have a cancer that goes beyond maladministration, which is pretty easy to come to here. We have got a very serious matter of malfeasance which in many instances constitutes a criminal act itself.

Gentlemen, what recommendations would you make to the subcommittee, and by extension to all the gas consumers in this coun-

try who are anxiously waiting to see now that these two subcommittees have come together to address this question which you, in large measure, are responsible for forcing to public attention, I would like to enjoy your ultimate response on this matter, if you will, please.

Mr. BUCHANAN. Let me say one thing. I think in defense of the agency, there have been substantial changes made in recent months. There has been a division set up to handle the special investigations on criminal matters. It has been set up with the headquarters here in the national office, with offices in the various regions, and my association with those offices in the regions, I think that they are well organized. I think they have some excellent people that have been hired. They have some attorneys that have criminal prosecution backgrounds, and I think that there has been a substantial change or a turnaround in the method in which the cases were pursued.

I think there is an understanding between the Department of Energy, whereas these cases would be referred on an expedited basis. Also there has been a Crude Oil Reseller Division set up, with specific offices and specific people assigned to audit crude oil resellers.

Mr. CONYERS. Do you know how many times I have heard that song and dance from the executive branch? I mean do you know how many times in energy alone we have changed musical chairs since the Dingell subcommittee first began these hearings? Do you know how many times different people now sit in different offices, and we are asked now to wait another year to see why they don't work, and we will come back again? There may even be new faces, new witnesses who will be telling us the same old story, that it has now been reorganized. There is a whole new approach. There is a new interest brought on by congressional—that is the routine response that we get every time.

Now I can't tell you that this one is predestined to failure, like most of the rest, but if you note a tone of skepticism in my voice, Mr. Buchanan, it is also only because—I am sorry——

Mr. BUCHANAN. I feel——

Mr. CONYERS. It is only because my experience tells me that is the dodge we always get. The Justice Department is going to tell us they have reorganized. Department of Energy is going to tell us they are reorganized.

Let me go through.

Do you have a different response?

I accept that one. They have just cut the auditors by one third, did you know that—two thirds, Mr. Buchanan, 650 to 250? Do you realize that that one statistic alone makes it totally impossible for me to believe that there is some new resurgence of interest in enforcement? Did you know that, sir?

Mr. BUCHANAN. I had heard that.

Mr. CONYERS. Of course you have.

Mr. HALLMAN. Congressman Conyers, I think the strongest response I could make to your question—and this gives me an opportunity to say something that I never thought I would have the opportunity to say before this committee—and that before coming today I had a basic cynical—not cynical, but skeptical question in

my own mind as to what this committee could do, if anything, especially about my concerns relating to the case that I felt was the best one I had ever seen in my legal career, on which the statute has run, and about which I know nothing, as far as what has taken place since the end of last year. But the incredible thing about my experience in the job that I just left effective May, this was the complete lack of management or the absurd management principles that were applied to case completion, case thwarting, case resolution. An attorney and a group of auditors would work the case up. The case would go to Washington, and if it was a substantial case—and I am not saying this with any paranoia—egomania would engulf it into the Washington syndrome, and that is my personal opinion. That is just based on my experience.

I don't know what you can do about that. I don't know what anybody can do about that, and I, basically, as a citizen, now feel that the best approach for the American economy and for the good of the American people would be to do away with the whole system, because you are looking at incredible things that took place 5 years ago about which you nor I nor God nor anybody can do anything when you have got a 5-year statute of limitations.

Mr. VOLKMER. Would the gentleman yield on that point?

Mr. CONYERS. Sure, I will yield to my colleague from Missouri.

Mr. VOLKMER. Let me mention something to you as a possibility. You know if Congress really wanted to, because there are some things we can do down here, if everybody wants to do it at one time, you can get something done. The statute of limitations could be extended.

Mr. GORE. If the gentleman would yield briefly for my comment, we have a backlog of burglary cases in many jurisdictions in this country, and one way to deal with them would be just to make burglary legal. I don't think that is the answer to the crude oil reseller.

Mr. HALLMAN. As I said, my attitude is somewhat cynical and should not be adopted. I will correct that, as far as being the best attitude. My basic point that I should have made—and I should have left it at that—is that I think if somehow the Department of Energy can be inspired to allow their attorneys and their audit staff to allow and mandate that they accept the responsibility for cases, assuring consistency as it can exist, and this sort of thing, then you know, if you can establish responsibility—and I think about a year ago I wrote an extensive memorandum about my opinion that when an attorney is given a case, it ought to be his case.

I had hired a lawyer out of the district attorney's office of Fulton County, Ga., and I had promised him grand things based on what my superiors had promised about you will have a case, it will be carried through, and your prosecutive abilities will be used to the utmost, and he is basically a clerk now, and he was a clerk when I left on May 5, and that is the validity of the situation.

I think he has some tremendous potential. He is very disillusioned. I think he will leave the Government. I think you have this throughout this agency.

The regional counsel in Dallas who had been there several months left, and I commended him for his sanity so quickly. But I

think basically management principles, if they could be applied, and if the world would quit worrying about who is in charge of what element of OGC and the Economic Regulatory Administration, and who is going to do what, and whether he has got the right title, then we could get some things done.

The last point I would like to make is issues within civil cases present tremendous problems in criminal cases, and we have all this national approach to things.

Mr. CONYERS. What do you mean by that?

Mr. HALLMAN. I will give you an example in a minute.

In order to create consistency, we have a national approach. An example would be we went to Washington with a small refinery audit, civil audit, and we sat down, and we said we want your sign off, OGC, on our position with regard to transaction. We got the sign off. We came back. We put in numerous hours of audit time based on that position, and a ruling interpretation came out of the Office of General Counsel which totally contradicted and reversed the opinion we had gotten, so that sort of craziness is not eliminated by national control.

Also I have seen historically within the FEA and the DOE that you have a seesaw approach to the thing. "Give it to the regions; give it to headquarters." That is another reorganization cop-out, you know, for the way to get at the problem. It seems to me that if you can establish management principles, regardless of which office is given emphasis, and allow people with some good sense and some good education, some good experience to be in control of a case and have direct contact with U.S. attorneys and get the cases through the courts, I think you will alleviate potentially some of the problems, assuming you could extend statutes and that sort of thing.

Mr. CONYERS [presiding]. Thank you very much.

Attorney McNeff, would you respond to the question?

Mr. MCNEFF. Yes, sir, Mr. Chairman.

I have already said in my recommendation that after all this, I really believe that you are going to have to have a special prosecutor. If you had a prosecutor with a small staff, it wouldn't even have to be that large of a staff who just wanted to go into the major oil companies, like in Mobil, where they are laundering their own oil, and sit down and say "OK, we want to know what happened," and grab the guys they daisy chain it with and say "All right, we are going to find out what happened. We are going to subpena you down. We are going to have a public trial on this. We are going to send everybody to jail that is guilty. We will give you maximum terms." You could find this stuff out very quickly. You could get the facts very quickly if you really wanted to, and also you could have some public trials, and like in the case of Conoco, not let me plead. One man—Conoco was blatantly violating the law for several years, at least in these transactions. They picked out one day for all these things. They took one guy. It never came out very much because they said, "All right, you plead guilty. Pay a small fine. We will put you on probation, and we will end the case." If you keep doing that when you can finally get a major company involved, you are never going to find out anything.

Mr. CONYERS. Of course not. Let me ask you then if any of you have knowledge that there have been more audits of the crude oil resellers than 11 out of 600 since the Department of Energy has been in existence?

Mr. HALLMAN. My answer would be no. I have no such knowledge.

Mr. CONYERS. Right.

Do you have any knowledge, sir, of how many resellers have been audited?

Mr. BUCHANAN. There has been substantial resellers audited in recent months with this new organization that I was telling you about earlier.

Mr. CONYERS. Substantial? One or two?

Mr. BUCHANAN. I would say probably 50-some odd resellers have been audited in the last 3 or 4 months.

Mr. CONYERS. By whom and where?

Mr. BUCHANAN. By the Crude Oil Reseller Division. There are three offices, one in Dallas, one in Houston, and one in Tulsa, Okla.

Mr. CONYERS. Have you seen the GAO report that came out yesterday?

Mr. BUCHANAN. I looked at it briefly, yes.

Mr. CONYERS. Do you remember how many completed audits they reported that the Department of Energy has engaged in from 1974 through September of 1978? I will refresh your memory—11 out of almost 600.

Mr. BUCHANAN. That is through September of 1978 though.

Mr. CONYERS. Now you are telling me that you have knowledge of some 50 or 60 underway or completed?

Mr. BUCHANAN. At least that many.

Mr. CONYERS. And where did you get this information?

Mr. BUCHANAN. I saw a statistical report internally recently that had, I believe, 57 on it.

Mr. CONYERS. You saw a statistical internal memorandum?

Mr. BUCHANAN. Yes.

Mr. CONYERS. I want to thank all three of you for submitting to the questions I have asked.

I now yield to my colleague from California, Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

You know the primary jurisdiction for the investigation and prosecution of Federal criminal law is with the Department of Justice, and the investigative agency is the FBI. They don't need referrals to commence criminal investigations; isn't that correct?

Mr. MCNEFF. Yes, sir.

Mr. EDWARDS. How many major oil companies are there; 10 or 15?

Mr. BUCHANAN. Thirty-four.

Mr. EDWARDS. Thirty-four?

Well, with 9,000 FBI agents and unlimited U.S. attorneys and assistant U.S. attorneys and investigators, how can the Department of Energy hold these criminal investigations and prosecutions up?

Mr. HALLMAN. In response to that question, one theory would be the same, as the U.S. attorney from Florida pointed out, and that is the expertise problem, the expertise in knowing how the industry operates, in knowing how the regulations are supposed to be

applied, and you have a history within the last several years of a lot of changes within regulatory definitions which can give ammunition in defense of a case, and it seems to me to be very necessary for a U.S. attorney in the FBI to have access to the Department of Energy personnel and qualified personnel to assist in understanding what elements could give rise to possible crime, and how to find the facts to support those elements.

Mr. EDWARDS. To your knowledge, does the FBI have many agents working on these cases, and are in-depth investigation being made at this time?

Mr. HALLMAN. I know of one case out of the Atlanta office in which the FBI is heavily involved, and in addition to that, I believe three of the people out of the Office of Special Investigations, maybe four, are basically on loan to the Department of Justice for completion of the investigation, and it is kind of a first-time thing, which is incredible. So that I think they are learning a lot about the situation and the approach to the case, and, obviously, I think it would be improper for me to comment on the exact nature of that case.

Mr. McNeff could better comment about the crude oil reseller cases, because the case I am referring to is not one of those, but it is a criminal case.

Mr. EDWARDS. I wish you would, because the FBI has CPA's and the Department of Justice and the FBI can hire all the expertise they want.

Is there a lack of will there? Is that what you are saying?

Mr. HALLMAN. I don't know. I don't know that the Department of Justice has been given that many opportunities for this sort of approach, but I think the one in Atlanta is working. I think the problem is it is so late, and they are facing statute problems, and through hearsay, I understand that within the FBI they don't feel the accounting expertise that is necessary for the purposes of one of our audits, because there are a lot of principles concerning DOE regulations and audits which are not normal accounting prinicples, are not the normal things that an accountant would learn through other experience, so I think you are correct in saying that sort of system will work, and I think it may be working there, although the big problem is the lateness of the hour, as I understand it, and that is a problem created by the history of these cases across the board.

Mr. McNeff will probably address a much larger problem area, as far as the crude oil resellers, and again, I think, as he emphasized earlier, a lot of those cases cross regional boundaries, as far as DOE regions. In other words, they cross from Texas into Georgia and into Pennsylvania, and there are some real problems there and have been historically, but he would better be able to comment about it.

Mr. CONYERS. Yes, I would appreciate it, because some very striking allegations have been made here today to the effect that there very well could be in our country a massive conspiracy going on, and yet here is the Department of Justice with all the authority in the world, all the money in the world, trained investigators with lots of experience. I wish Mr. McNeff would direct why haven't they moved ahead? They are not beholden to the Depart-

ment of Energy for anything. They don't have to get anything from the Department of Energy.

Mr. McNeff. Congressman Edwards, I am drawing certain conclusions that I know are rather alarming. I don't want to try to keep drawing those. I think that is what you all have to do is to take the evidence that we have got, and what has happened in these investigations, and draw your own conclusions.

I would comment though that one thing Mr. Hallman is emphasizing, that it is so late now in these cases, and the statute running. What we are talking about here is the cases that we are dealing with, these daisy chains, and even the crude oil reseller.

What we are working with are the companies' records for like 1974 or 1975. Even though those companies have stayed in business, and from all indications they are doing exactly what they always were doing, it is just with such limited manpower and such limited support, the most we were able to do is to get like a 6 months' or a year's worth of partial records from these companies, usually back just after the embargo, so we have a very large time working on these out-of-date cases because we haven't been able to update them. That is one of the problems.

Another problem is I used to be a prosecutor where somebody's house would be burglarized or something like that. There you have somebody, a complaining witness to come in and say "Look, these are the facts. My house was burglarized, and I want you to do something about it."

Here you have a crude oil reseller, and he flips the price. He doubles the price of oil, but you know, it comes out at the gas pump, so, you know, you don't have the pressure on investigative agencies. It is just this general conspiracy, and the most you have got is people complain but they don't know really where to focus their pressure. That is a very big problem. Also it is very hard to get information from oil industry, and the Government does not seem to be too anxious to do it, and the FBI does not have the independent data, and also they don't seem willing to pursue these. They didn't help our investigations. I don't know why, but anyway they didn't. They didn't come in. They waited for referrals, and we told them back in December, at least it was very obvious, that we didn't have the investigative capability to conduct general conspiracy cases. That is one of the main problems. That is what the investigators were trying to do now for DOE on these criminal cases, general conspiracy, because our pricing regulations won't do it. It is a very large problem.

Mr. Edwards. Thank you very much. I, too, want to join my colleagues in thanking you for being here today. You are making a great contribution.

Thank you, Mr. Chairman.

Mr. Conyers. The gentleman from Missouri, Mr. Volkmer.

Mr. Volkmer. Thank you, Mr. Chairman.

Mr. Buchanan, you were previously interrupted, when you started talking about the crude oil reseller group that you now have, or organization you now have within DOE. When was that established?

Mr. Buchanan. I was trying to remember back.

Mr. Volkmer. Five years ago, three years ago?

Mr. BUCHANAN. No. It has been in operation about 6 to 8 months.

Mr. VOLKMER. Six to eight months?

Mr. BUCHANAN. Right.

Mr. VOLKMER. And now we have got approximately 50 to 60 now being audited, resellers, I believe you testified.

Mr. BUCHANAN. I said I saw that number in a statistical report. I am sure there are more than that.

Mr. VOLKMER. You are basing that on memory of what you saw. What I want to know is, what period are they auditing?

Mr. BUCHANAN. Well, many of these crude oil resellers they are looking at came in line at the last few years. In fact, they are growing at a substantial number every year, and a lot of them are current and a lot of them go back a ways. So it depends on which one they are auditing.

Of course, they are trying to get those that go back into say 1974 and 1975 out of the way because of the statute problems, and work these near ones as they come up the chain, you know.

Mr. VOLKMER. Now, I am sorry I got here late. What is your exact position with the DOE?

Mr. BUCHANAN. I am the deputy district manager, enforcement, southwest district, Dallas.

Mr. VOLKMER. And how long have you been in that position?

Mr. BUCHANAN. I have been in that position now officially about 2 weeks.

Mr. VOLKMER. Two weeks. What were you before that?

Mr. BUCHANAN. I was the special counsel liaison assistant director of compliance for the Houston area.

Mr. VOLKMER. Special Counsel liaison. Liaison with whom?

Mr. BUCHANAN. Well, you have got two divisions within the Department of Energy. You have got the Special Counsel, which has a responsibility for auditing the major refineries, and then you have Enforcement, which audits all others. And I was liaison of the Houston office for that group. Between the Enforcement Division and the Special Counsel Division.

Mr. VOLKMER. You mean you just coordinated those two activities?

Mr. BUCHANAN. Coordinated the various activities within, like the NGO—you know, you have the same problems within the two divisions, whether it is major or whether it is independent. You also have problems with producers that are the same, whether they are major or whether they are independents. I coordinated the findings between the two groups.

Mr. CONYERS. Will my colleague yield?

Mr. VOLKMER. I will in a minute.

In your present position how many auditors do you have underneath you?

Mr. BUCHANAN. There are 157.

Mr. VOLKMER. You have supervisory control over 157 auditors?

Mr. BUCHANAN. Right.

Mr. VOLKMER. And right now how many of those are working on the reseller problem?

Mr. BUCHANAN. Of the 157?

Mr. VOLKMER. Yes.

Mr. BUCHANAN. I would say in the neighborhood of probably 65, 66 of them.

Mr. VOLKMER. How many does it take—do they work in teams?

Mr. BUCHANAN. They work in teams.

Mr. VOLKMER. How many to a team on the average?

Mr. BUCHANAN. Normally two auditors to a team.

Mr. VOLKMER. So you have supervision over around 30 to 33 of the total 50 or 60 that are being done?

Mr. BUCHANAN. Pardon?

Mr. VOLKMER. Of the total auditing being done, you have supervision—out of the 50 or 60 which you read about, you have supervision over 30 to 33 of those?

Mr. BUCHANAN. Those auditors are under a director of crude oil resellers. They do not report to me, or to the district manager. They report to the director of crude oil resellers, and he is at the national level.

Mr. VOLKMER. He is up here in Washington?

Mr. BUCHANAN. No, he is not. He is in New Orleans, La.

Mr. VOLKMER. Well now, I go back to my question again. The auditors that you have supervision over, they are not doing this reselling auditing then?

Mr. BUCHANAN. No; they are not.

Mr. VOLKMER. Pardon?

Mr. BUCHANAN. They are not auditing crude resellers.

Mr. VOLKMER. We have to find out from somebody else then how many we have auditing the resellers, don't we?

Mr. BUCHANAN. No, I told you there was probably 65, 66.

Mr. VOLKMER. That you have?

Mr. BUCHANAN. No, they are all Enforcement auditors, but they don't report to us. They report to the director in New Orleans. Of the total audit strength, 66 of them are working for the director of crude oil resellers.

Mr. VOLKMER. Then you don't really have supervision over those?

Mr. BUCHANAN. That is right.

Mr. VOLKMER. They are assigned to you by number and that is all?

Mr. BUCHANAN. That is all.

Mr. VOLKMER. All right. Then we should talk to him too, I guess, shouldn't we?

Mr. BUCHANAN. Correct.

Mr. VOLKMER. To find out what is really going on.

Mr. McNeff, I still have a minute or two left.

You mention on page 3 an Albert Alkek.

Mr. MCNEFF. Yes, sir.

Mr. VOLKMER. And you say that at one time the acting head auditor——

Mr. MCNEFF. There were two situations.

Mr. VOLKMER [continuing]. Is a personal friend with Albert Alkek.

Mr. MCNEFF. That was the acting head attorney.

Mr. VOLKMER. Acting head attorney?

Mr. MCNEFF. Yes, sir. The attorney in December was transferred, the head attorney was transferred to Special Counsel and

new replacement was not named, and they designated Harold Clements, who was a personal friend of Albert Alkek, to be the acting head attorney. What that did is, they removed him, because of conflict of interest, from involvement in the criminal cases that I was working on, but he was left in charge of other related criminal cases because the resellers are mostly related, selling back and forth between themselves, but I couldn't talk to him about any of those related cases, even though I needed them for my investigation, because they dealt with the firms he was investigating.

There were several crude oil resellers he was investigating, and, of course, I could not get any help from him, as far as advice or anything else, as to how to proceed with my investigations and it made it very difficult to get resources. Not that he deliberately tried to do anything to my investigation; just by putting him in, with a direct conflict of interest, it further separated our groups.

Mr. VOLKMER. What is your present position right now?

Mr. MCNEFF. I am listed as a staff attorney for the Department of Energy working on sometimes civil cases. I don't work on any criminal cases.

Mr. VOLKMER. You are not allowed to work on criminal cases?

Mr. MCNEFF. No, sir.

Mr. VOLKMER. By direction from whom?

Mr. MCNEFF. From Washington. I was appointed by Troy Webb——

Mr. VOLKMER. Let me ask you this. Who is your immediate supervisor today?

Mr. MCNEFF. Troy Webb, regional counsel.

Mr. VOLKMER. Troy——

Mr. MCNEFF. Troy Webb. He is my immediate supervisor. He is head attorney in region 6. He recommended that I be allowed to work on the criminal cases and he actually assigned me to the civil cases against the crude oil resellers, and after I was assigned I was on it for 1 day and then it was vetoed in Washington by our General Counsel, Lynn Coleman. So I was taken off those cases.

Mr. VOLKMER. Who is Lynn Coleman?

Mr. MCNEFF. He is the General Counsel of the Department of Energy.

Mr. VOLKMER. What is his background?

Mr. GORE. Will the gentleman yield?

How do you know that he personally vetoed your assignment to criminal cases?

Mr. MCNEFF. Maybe I should qualify that. Mr. Webb told me—he did assign me to it and he told me if anybody wanted to ask him from this committee he would be glad to tell them he thinks I should be allowed to work on the cases since I was the only one that knew many and Washington personally vetoed them, supposedly because some of the head auditors of the program didn't want me working on it and he got that word from Mr. Coleman.

Mr. GORE. And he personally talked with Mr. Coleman?

Mr. MCNEFF. That is my understanding, yes.

Mr. GORE. Thank you.

Mr. VOLKMER. What is Mr. Coleman's background? Do you know that?

Mr. McNeff. Sure. That is one of my main complaints. It was one of the reasons I came to the subcommittee, why I felt like at this point I couldn't work within the Department of Energy any more.

Mr. Coleman is related to Tony Canales. Nothing wrong with that. He is related to Mr. Canales.

Mr. Volkmer. To who?

Mr. McNeff. Mr. Tony Canales, the witness, the prior witness. His background is, he was chief oil and gas lobbyist for Vincent & Elkins and Vincent & Elkins, more than any other single firm, represented the criminal oil resellers and producers time after time. Ammon Oil, Westland, basic cases—Permian. There is a list of about seven or eight daisy chains.

Mr. Volkmer. In other words, if we would check the records of the U.S. district courts in the southern district of Texas, and those criminal cases that are brought against the resellers, you would find that firm's name. Is that what you are telling me?

Mr. McNeff. In his confirmation hearings he turned over the list of Vincent & Elkins clients. I don't know that he personally sat in on the discussions. I don't know if he personally represented them, but in the confirmation hearings he listed the firms, some of which, like Conoco, the *Westland* case, Amid Oil, were presently under investigation, and, of course, Conoco, that case was prosecuted and several others are offered for prosecution. Many others which have not been referred for prosecution, I know for a fact have engaged in illegal daisy chain and crude oil reselling.

We have the evidence in our files on that. I think they are under investigation now.

Mr. Volkmer. Thank you very much. I think I have used up all my time.

I could ask some more. Thank you, Mr. Chairman.

Mr. Conyers. You are more than welcome.

Mr. McNeff, you have a lot of time on your hands these days, I presume?

Mr. McNeff. Yes, sir.

Mr. Conyers. When was the last time you did a good day's work for the Department of Energy, in your field?

Mr. McNeff. Well, I guess it would have been, oh, June 19, the day I was removed, 1978, from these cases. Of course, I like to think that I have done a good job, trying to investigate the oil companies by at least seeing what happened since then. But, basically, I haven't done any meaningful work.

Mr. Troy Webb said he would be glad to tell anybody that, the present counsel, who is a good attorney. He has only been there 6 or 7 months, and he is quitting, and a smart attorney.

Mr. Conyers. Mr. Herbert Buchanan, you are now for 2 weeks, you have been liaison?

Mr. Buchanan. No.

Mr. Conyers. You were liaison?

Mr. Buchanan. My official paperwork came through. I have actually been acting as the Deputy District Manager for about 3 months. My paperwork came through about 2 weeks ago.

Mr. Conyers. Deputy District Manager.

Mr. VOLKMER. Will the gentleman yield? Could I ask him a question on that?

You really don't have anything to do with the problem, do you?

Mr. BUCHANAN. You are speaking to me?

Mr. VOLKMER. Yes, I am talking to you.

Mr. BUCHANAN. To the crude oil resellers?

Mr. VOLKMER. Yes.

Mr. BUCHANAN. We do not have responsibility.

Mr. VOLKMER. You, yourself, do not have anything?

Mr. BUCHANAN. Do not have responsibility for the crude oil resellers.

Mr. CONYERS. How do you describe your function, Mr. Deputy District Manager?

Mr. BUCHANAN. Our function is to audit the crude oil, independent crude oil producers, the independent natural gas processors, and product resellers, civil portions of crude oil resellers, and small refiners.

Mr. CONYERS. So resellers are included?

Mr. BUCHANAN. The civil portion.

Mr. CONYERS. Are you aware of the GAO report that said in the whole of the Department of Energy, up until September 1978, a total of 11 resellers have been audited?

Mr. BUCHANAN. Yes, sir, I am.

Mr. CONYERS. Well, how many did you audit during any period of time?

Mr. BUCHANAN. Of those 11, probably 8 were ours. Maybe all 11 of them.

Mr. CONYERS. Maybe all 11?

Mr. BUCHANAN. Yes.

Mr. CONYERS. Are you in the process of auditing any at the present moment?

Mr. BUCHANAN. Yes, we are.

Mr. CONYERS. How many? One or two?

Mr. BUCHANAN. No. There is more than that. Offhand, I cannot give you the exact number.

Mr. CONYERS. Could I guess eight for you?

Mr. BUCHANAN. Pardon?

Mr. CONYERS. Could I guess eight?

Mr. BUCHANAN. That sounds correct.

Mr. CONYERS. OK. Are there any other questions by members of the subcommittee?

The gentleman from Tennessee is recognized.

Mr. GORE. Maybe this question has been answered. I don't think it has been. Why were DOE auditors barred fron interviewing officials of the companies involved in the reseller frauds? Can any of the witnesses explain that to me?

Mr. HALLMAN. In response to the question specifically with regard to the *Citmoco* case, we understood, although we were not informed in what situations the problem had occurred, we were informed that particularly individuals that we wished to interview were involved in other investigations by the Department, and that we should wait instructions by the Department until we interviewed them.

Mr. GORE. Who told you that?

Mr. HALLMAN. The Office of General Counsel.

Mr. GORE. Office of General Counsel told you that?

Mr. HALLMAN. Yes. Specifically I think Tom Humphreys was the one instructing us. At that time we considered that to be proper; in other words, that if they were waiting to interview someone, and they felt like our interview would prejudice to some extent whatever they were doing, then we were willing to accept it.

We were never informed as to what that was, or for what purpose we needed to wait.

Mr. GORE. Well, were they waiting to interview these people.

Mr. HALLMAN. I don't know. We did conduct our interview of the principals of the oil companies. We ultimately did. The Gulf official took the fifth amendment, so we actually technically didn't conduct an interview, although we sat down and attempted to do so.

Mr. GORE. Yes.

Mr. HALLMAN. The big problem we had was with officials in the Department of Commerce that we wanted to interview, and we were refused access to them.

Mr. GORE. Several officials in the Department of Commerce that you wanted to interview in connection with the reseller fraud case, and you were denied——

Mr. HALLMAN. In connection with the *Citmoco* case. And you could, I think, accurately label that a reseller fraud case.

Mr. GORE. Are these people still in the Department of Commerce?

Mr. HALLMAN. We never were able to make that determination. They were officials that were there toward the end of 1973 and the early part of 1974.

Mr. GORE. I see.

Mr. HALLMAN. The General Counsel wrote certain opinions that we felt contradicted certain things that officials in the Department of Commerce did. We wished to question him. We wished to question those officials.

There were several documents that were generated that said, hey, we feel like, from lower echelon officials, within the Department of Commerce, that said this is a violation of the EPAA, we ought to come down hard, we ought to stop this, we ought to refuse it.

Now, all of a sudden it was reversed with really no explanation, other than a political explanation.

But anyway, we always took the position if that political reason was the only reason that certain actions were taken by the Department of Commerce, which created a defense problem, then we should be able to interview those officials to see what in fact took place.

If a political reason was the only reason, that would void that defense. But we were never allowed to interview them.

Mr. GORE. I think that is a helpful response. Let me move to another area just briefly.

Now, the reseller is the profit center in this scheme. But really there are also payments back to the producer, and forward to the refiner, for individuals working for the producer or the refiner; correct?

Mr. HALLMAN. Yes, sir.

Mr. GORE. In order for the scheme to work, the reseller has to convince the producer to sell the old oil and has to convince the refiner to accept the new oil that has been falsely certified.

You get these phony investment schemes, you get consulting fees, you get phony joint ventures, you get drilling funds, correct? You have payments forward and backward. Could somebody say yes?

Mr. HALLMAN. Yes.

Mr. CONYERS. Let the record show all the witnesses are nodding their heads affirmatively.

Mr. GORE. All right.

That spreads the wealth, so to speak. Everybody is getting a piece of it. This other accusation was made to a member of the subcommittee staff, by an informant within one of the companies. I asked about this earlier today, and I want to ask you gentlemen about it.

He said that there was a slush fund of several million dollars created to "take care of" people who should have been enforcing this.

Now, is that just a wild accusation that is just totally off the wall, or did you encounter anything in your investigations that led you to believe that it ought to be looked into further?

Mr. HALLMAN. If I can respond to that, I have never seen any evidence of that particular sort of fund. I have seen evidence regarding a former official of the FEA, or FEO, in Atlanta, who is the subject of an investigation, who was heavily tied with members of the oil industry, and was, in my opinion, I believe there was substantial evidence of in effect bribes and that sort of thing.

Mr. GORE. Did you recommend prosecution in that, or did anyone?

Mr. HALLMAN. That case is in Justice now.

Mr. GORE. It is now pending?

Mr. HALLMAN. Has been for 3 years.

Mr. GORE. It has been pending for 3 years? When does the statute run out?

Mr. HALLMAN. I don't know. That was another case totally controlled out of Washington. The first time that I knew about it was when an investigator from this committee met with certain employees and began asking questions.

So really, I am out of touch with the actual procedures that have taken place.

Mr. GORE. Well, the picture I get is that——

Mr. HALLMAN. What I am saying is that is the only concrete example of ties of an illegal nature between members of the oil industry and DOE employees that I have ever seen.

Mr. GORE. Mr. McNeff, do you have any hard evidence relating to this subject?

Mr. MCNEFF. I don't have any hard evidence. I talked to, before we were barred from talking to anybody else, I talked to a couple of small ex-employees of Summit, and both of them said, yes, this is going on, not just in Summit, but this is going on with all the resellers, it is flipping, everybody in the industry knows it that is involved with crude oil.

Mr. GORE. What is going on?

Mr. McNeff. The illegal switches of old oil to new oil. But your question, about one of the individuals, Jack Pierce, the only evidence that I have to confirm any of that, if it does, is that he said that he had heard that an FEA official had been paid off to limit the Summit investigation. But he did not name the official.

I turned that information over to the Inspector General's office, and I don't know what happened to it.

Mr. Gore. Well, in my opinion, that is not enough to go on, not enough to sustain the accusation. Let me just conclude briefly by adding my thanks to the thanks that have already been expressed. I am sorry you have had the experience that you have had in Government, but I certainly commend your willingness to come forward.

I might say, just in closing briefly, Mr. Buchanan, that I can't think of anything worse than to call a man off a hard-earned vacation than to come up to a congressional subcommittee. I would like to extend special thanks to you for coming and sharing with us your knowledge of this subject.

Mr. Conyers. Mr. Volkmer?

Mr. Volkmer. Mr. Buchanan, can you tell me who is the person that is in charge of the special group on resellers in New Orleans?

Mr. Buchanan. His name is Ken Jones.

Mr. Volkmer. Ken Jones?

Mr. Buchanan. Yes, sir.

Mr. Volkmer. Do you know his background?

Mr. Buchanan. Yes, I do.

Mr. Volkmer. Can you tell us briefly what it is?

Mr. Buchanan. Ken Jones is a career accountant. He has been with the Government in excess of 25 years. He is a highly qualified individual. He served as area manager for about 4 years in the New Orleans office.

Mr. Volkmer. Is he with the Department of Energy?

Mr. Buchanan. Yes, he is.

Mr. Volkmer. Before that was he with FEA?

Mr. Buchanan. Before that he was with FEA, FEO.

Mr. Volkmer. Was he an auditor?

Mr. Buchanan. He was an auditor.

Mr. Volkmer. Was he in civil work?

Mr. Buchanan. Civil work. And prior to that he was with NASA.

Mr. Volkmer. Civil work?

Mr. Buchanan. With Defense Contract Auditing Agency.

Mr. Volkmer. That is civil?

Mr. Buchanan. Yes, all civil.

Mr. Volkmer. Maybe we ought to have him. Do you know of any background he had in criminal investigations?

Mr. Buchanan. I know of no background in criminal investigations.

Mr. Volkmer. So we have a man in charge of a task force, a group that is looking for criminal violations, who has never had any experience in criminal violation work. That is what you are telling me. He could be an honorable person.

Mr. Buchanan. I don't know whether he has or not. I don't have any knowledge of his criminal investigative background.

Mr. VOLKMER. Thank you.

Mr. CONYERS. Of course, you are not an attorney, Mr. Buchanan.

Mr. BUCHANAN. No, I am not.

Mr. CONYERS. You are not an accountant, either, are you?

Mr. BUCHANAN. I am an accountant auditor. I have a degree in accounting, and I have been in auditing nearly 20 years, with the Government.

Mr. CONYERS. Are you an investigator?

Mr. BUCHANAN. No, I am not.

Mr. CONYERS. I call on counsel, Mr. Barrett.

Mr. BARRETT. Mr. Hallman, could you tell the subcommittees how the Georgia State set-aside investigation is being handled by the Department of Justice, as you understand it?

Mr. HALLMAN. I really am not capable of responding to that question. We at the time of referral to Justice—and handling by them—I and the attorney on my staff, we were instructed that we would assist in whatever needs they had, and that certain people would be assisting them from the Department.

But I have no—I am not competent to——

Mr. BARRETT. An extensive criminal reference was written up, and it was transmitted to the Department.

Mr. HALLMAN. Yes. I don't believe the one—a referral was sent to the Department. In that instance, I would add that at that point in time that investigation needed further investigation, and the referral as it was sent I believe outlined that need. So I don't know what the status of that is.

Mr. BARRETT. Did you have any meetings with anyone from the Department of Justice which would indicate that it was being given priority or not priority?

Mr. HALLMAN. All those meetings were handled out of Washington. We met I believe on one occasion with a member of the Fraud Division, and after that all the meetings and contacts were between the Office of General Counsel and Justice.

Mr. BARRETT. OK. I have no other questions, Mr. Chairman.

Mr. CONYERS. Gentlemen, we are in your debt. Thank you very much.

Our next witness is the Director of the Energy and Minerals Division of the U.S. General Accounting Office, Mr. J. Dexter Peach, who has submitted a statement that will be at this time incorporated in full into the record. He is accompanied by Mr. Alan Zipp.

We also have the GAO report which will be distributed and made available. We see other people approaching the witness table. Would you identify yourselves and then you may proceed.

Mr. PEACH. Mr. Chairman, I am Dexter Peach, Director of the Energy and Minerals Division, U.S. General Accounting Office. I have with me today, on my left, Mr. Kevin Boland, and to his left, Mr. Jerry Elsken.

Mr. Boland is Associate Director and Mr. Elsken is Assistant Director responsible for our work in the energy regulation area.

On my right, Mr. Alan Zipp, the team leader on the assignment we undertook to look at the crude oil reseller price control enforcement program, Department of Energy.

Mr. CONYERS. Welcome before the subcommittee, gentlemen. Your work has been very important to all of us here. We would appreciate your spreading it on the record at this time.

STATEMENT OF J. DEXTER PEACH, DIRECTOR, ENERGY AND MINERALS DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY F. KEVIN BOLAND, ASSOCIATE DIRECTOR; GERALD ELSKEN, ASSISTANT DIRECTOR; AND ALAN S. ZIPP, TEAM LEADER

Mr. PEACH. Thank you, Mr. Chairman.

I have my statement. I will try to highlight certain parts of it for you, if you would like, and then ask you to enter the complete statement in the record.

On August 25, 1978, Senator John A. Durkin, of the Senate Committee on Energy and Natural Resources asked GAO to review selected issues concerning the Department of Energy's handling of crude oil reseller cases involving suspected criminal activity. Our report is the result of the Senator's request.

Copies of our report have been made available to the subcommittees, so I will limit my remarks to a summary of our findings and recommendations. But first I would like to place this review in proper perspective.

GAO studies of the adequacy of enforcement of oil pricing regulations go back to the beginning of the price control program under the Federal Energy Administration. We have reported on FEA's enforcement program on a number of occasions.

The overall findings of our previous reports have shown a consistent pattern of problems plaguing the Government's efforts to effectively and adequately implement the oil price regulations.

Some of the problems we discussed in prior reports and testimonies included the lack of adequate audit coverage, excessive concentration of audit effort in some areas, incomplete audits being performed, substantive issues relating to the adequacy of regulations remaining unresolved, and organizational disputes within the agency hindering audit work.

Mr. CONYERS. Excuse me. We have a vote. We will suspend briefly now and resume at 4:15.

The subcommittee stands in recess.

[Brief recess.]

Mr. CONYERS. The subcommittee will come to order.

Mr. Peach, you may proceed.

Mr. PEACH. Thank you, Mr. Chairman.

Many of the problems I was describing earlier surfaced again in our recent review of the enforcement of regulations governing crude oil resellers.

Our report addresses three primary issues:

The adequacy of DOE procedures for handling criminal cases;

The adequacy of audit coverage of crude oil resellers; and

The effectiveness of DOE in resolving regulatory issues affecting reseller audits.

The handling of criminal cases.

DOE written procedures do not provide for participation by Justice in decisions affecting the scope of and approach to investigations to determine that violations are willful and subject to crimi-

nal penalties. These procedures require DOE investigators, in our opinion, to go further than necessary before referring cases to Justice.

These procedures are essentially the same as those followed earlier by FEA whose preoccupation with establishing the willfulness of violations adversely affected its overall reseller audit program and contributed to delays in referrals to Justice.

In this regard, our review of all nine crude oil reseller cases referred to Justice as of March 1979 showed lengthy delays between the time the agency had information indicating criminal activity and the time the cases were referred to Justice.

Mr. CONYERS. Have you in any part of your report detailed these time lengths?

Mr. PEACH. Yes, Mr. Chairman. We do. We also have a couple of case examples.

Mr. CONYERS. All right, that is excellent.

Mr. PEACH. In all but one of these cases the delays ranged from 1 to 3 years. In addition, FEA's expanded investigative role had diverted scarce staff resources away from the agency's primary responsibility of insuring that crude oil resellers comply with price control regulations.

It was not possible for us to determine exactly when the investigations should have been terminated and the cases referred to Justice. However, it was apparent from our detailed review of several case histories that FEA auditors and investigators pursued the determination of the willfulness of the violations well beyond the point at which the cases could have been referred to Justice. In some of these cases, violations took place in early 1974, and by early 1979 the Federal 5-year statute of limitations could begin to prevent prosecution of some violations.

We are concerned that because of the similarities between FEA's procedures and practices and DOE's procedures and plans, which place greater emphasis on investigations than audits, DOE, like FEA, will spend too much time and resources establishing the willfulness of a relatively few violations at the expense of adequate audit coverage of all crude oil resellers and more timely case referrals to Justice.

[Testimony resumes on p. 102.]

[Mr. Peach's prepared statement follows:]

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED ON MAY 30, 1979

STATEMENT OF
J. DEXTER PEACH, DIRECTOR
ENERGY AND MINERALS DIVISION
U.S. GENERAL ACCOUNTING OFFICE
ON THE
ADEQUACY OF THE DEPARTMENT OF ENERGY'S
ENFORCEMENT OF CRUDE OIL RESELLER PRICE CONTROLS
BEFORE THE JOINT HEARING OF THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
AND THE
SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman and members of the Subcommittees:

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PRIOR GAO REPORTS

GAO studies of the adequacy of enforcement of oil pricing regulations go back to the beginning of the price control program under the Federal Energy Administration (FEA). We have reported on FEA's enforcement program on a number of occasions.

The overall findings of our previous reports have shown a consistent pattern of problems plaguing the Government's efforts to effectively and adequately implement the oil price regulations.

Some of the problems we discussed in prior reports and testimonies included:

--the lack of adequate audit coverage,

--excessive concentration of audit effort in some areas at the expense of others,

--incomplete audits being performed,

--substantive issues relating to the adequacy of regulations remaining unresolved, and

--organizational disputes within the agency hindering audit work.

Many of these problems surfaced again in our recent review of the enforcement of regulations governing crude oil resellers.

Our report addresses three primary issues;

--the adequacy of DOE procedures for handling criminal cases,

--the adequacy of audit coverage of crude oil resellers, and

--the effectiveness of DOE in resolving regulatory issues affecting reseller audits.

THE HANDLING OF CRIMINAL-CASES

DOE written procedures do not provide for participation by Justice in decisions affecting the scope of and approach to investigations to determine that violations are willful and subject to criminal penalties. These procedures require DOE investigators, in our opinion, to go further than necessary before referring cases to Justice.

These procedures are essentially the same as those followed earlier by FEA, whose preoccupation with establishing the willfulness of violations adversely affected its overall reseller audit program and contributed to delays in referrals to Justice. In this regard, our review of all nine crude oil reseller cases referred to Justice as of March 1979 showed lengthy delays between the time the agency had information indicating criminal activity and the time the cases were referred to Justice. In all but one of these cases the delays ranged from 1 to 3 years. In addition, FEA's expanded investigative role had diverted scarce staff resources away from the agency's primary responsibility of ensuring that crude oil resellers comply with price control regulations.

It was not possible for us to determine exactly when the investigations should have been terminated and the cases referred to Justice. However, it was apparent from our

detailed review of several case histories that FEA auditors and investigators pursued the determination of the willfulness of the violations well beyond the point at which the cases could have been referred to Justice. In some of these cases, violations took place in early 1974, and by early 1979 the Federal 5-year statute of limitations could begin to prevent prosecution of some violations.

We are concerned that because of the similarities between FEA's procedures and practices and DOE's procedures and plans, which place greater emphasis on investigations than audits, DOE, like FEA, will spend too much time and resources establishing the willfulness of a relatively few violations at the expense of adequate audit coverage of all crude oil resellers and more timely case referrals to Justice.

The Department of Energy has made organizational changes and, we are told, developed informal procedures to improve the referral of cases to the Department of Justice. The fact remains, however, that the Department's written procedures regarding referral of crude oil resellers have not changed; and the risks of these procedures producing the same adverse effects as FEA experienced are very real. Also, there is no assurance that the operating practices we are told are in place are in line with overall Departmental policy

and will continue regardless of personnel changes. Because no new crude oil reseller cases have been referred to the Department of Justice under this new system, we were not able to determine its effectiveness.

The Justice Department has also taken steps to promote closer coordination with DOE, such as the creation of an energy unit within the Fraud Section of the Criminal Division to receive referrals from DOE and to maintain laision with all U.S. Attorneys handling DOE cases. We believe such actions are on target and provide an appropriate framework for closer coordination. But they still do not take the place of written procedures and they do not go far enough.

We are recommending that the Secretary of Energy enter into a memorandum of understanding with the Attorney General to establish written procedures for referring criminal cases to the Department of Justice which assure that the responsibilities of the two departments are clearly delineated. Among other things, the procedures should provide for timely and meaningful involvement by Justice in key decisions affecting the scope of, and approach to, criminal investigations.

We are also recommending that the Attorney General review opportunities to expand informal coordination channels with DOE to include regional level discussions of cases before formal referral.

THE ADEQUACY OF AUDIT COVERAGE

Since the price control program began in January 1974, both FEA and DOE had given low priority to crude oil reseller audits. At the close of the last fiscal year in September 1978, DOE told us it had identified 592 crude oil resellers but completed audits of only 11 and had 43 audits in progress or planned.

This total of 54 represents nationwide coverage over a 5-year period of about 9 percent of all crude oil resellers.

A review of the public record leaves no doubt that DOE and FEA were fully apprised of the shortcomings of their audit activities by GAO and others and that they agreed corrective actions were needed and would be taken. However, until recently, no such actions were taken.

DOE's attention to crude oil reseller audits has been continually changing and evolving over the past several months which we believe was at least partly in response to increased visibility and attention created by various congressional reviews (including GAO's), court action, and media coverage.

Over the next 2 years DOE plans to significantly increase its reseller audit activity before phasing down that activity in fiscal year 1980. DOE's top three audit priorities are as follows;

--highest priority--provide continuing full support to investigations of suspected willful violations;

--second priority--complete crude reseller civil audits;

--third priority--bring previously opened civil cases to resolution;

The fiscal year 1980 budget figures show that support to special investigations, which are, in effect, criminal investigations, by the end of fiscal year 1979 will account for 50 percent of the crude oil resellers staff positions. By the end of fiscal year 1980, DOE projects that 38 percent of its crude oil reseller staff will be used to support special investigations.

While we have no basis to question the capability of DOE auditors assigned to crude oil reseller audits, we are concerned that DOE may be spreading its resources too thin and starting audits without the ability to complete them. Evidence of this exists in the minimal resources devoted to recent audit starts. Also, many of the audits completed to date appear to have been limited to evaluating compliance with requirements for certifying oil as either old oil or new oil. The focus on certification does not give adequate consideration to another significant part of DOE's compliance and enforcement program--pricing audits designed to ensure that oil is sold at the proper price. We believe that an

effective audit should include an evaluation of compliance with both certification and pricing regulations.

After completion of our field work, DOE provided us statistics indicating a surge in the number of open audits and recent starts. While time did not permit us to make a detailed review of the adequacy of the staffing of the audits, we did obtain DOE staffing information showing the time spent on each assignment.

We analyzed all 39 crude oil reseller audits DOE started during the first 6 months of fiscal year 1979 and found that DOE assigned the equivalent of one auditor on a part-time basis to 33 of the 39 audits. On only 6 of the 39 audits did we find that DOE had assigned at least the equivalent of one full time auditor to the assignment.

DOE officials said that several factors, such as unavailabilty of records, and legal actions, could in some cases, account for the low level of audit effort.

We are recommending that the Secretary of Energy:

--Review staff assignments for the ongoing audits to ensure that an adequate number of qualified auditors have been assigned to satisfactorily complete them in a timely manner.

--Provide the audit resources necessary to effectively carry out its workplan for fiscal years 1979-80, including pricing audits.

--Monitor the results of ongoing audits and increase the audit coverage if the results show a high incidence of violation.

UNRESOLVED REGULATORY ISSUES

Another major problem that impeded pricing audits in the past was the matter of unresolved issues. Until recently, DOE had been unable to effectively audit crude oil resellers for compliance with pricing regulations because key issues involving the interpretation and application of such regulations had not been resolved despite repeated criticisms by GAO and others over the last several years.

DOE and FEA have had a history of failure to promptly resolve regulatory issues so that an adequate compliance and enforcement effort could be conducted. Clarification of existing regulations had received a low priority because, according to Office of General Counsel officials, their staff had been overburdened with requirements for developing new regulations.

Two major issues were identified by DOE regional offices as having impeded pricing audits, namely

--the computation of the legal selling price of crude oil where multiple inventories make up the base period cost from which allowable cost increases are measured, and

--the determination of the legal selling price of crude oil for resellers with no base period cost because they were not in business during the May 1973 base period.

Without going into a detailed explanation of these very complex issues, I should point out that these issues were not new. The first issue was raised initially in August 1975 and the second issue in May 1976. Furthermore, such issues were highlighted as needing early resolution in reports issued by us and the DOE Inspector General. These issues have now apparently been resolved to DOE's satisfaction. Neither issue however, was resolved in a timely manner, and we question whether DOE effectively handled the first issue. Furthermore, it was not until December 1978, during our review, that DOE provided written guidance on how to handle the second issue.

The prolonged period required to resolve these issues had adverse effects in that DOE had to

--suspend pricing audits and limit its audit activities to reviews for compliance with certification requirements,

--suspend assessments of possible overcharges against crude oil resellers, and

--delay completion of audits which might ultimately jeopardize the prosecution of some violations because of the 5-year statute of limitations.

We are recommending that DOE develop a specific plan to ensure that all regulatory issues are promptly resolved. Such a plan should pinpoint responsibility and accountability for timely consideration and resolution of issues raised, including the establishment of timeframes for taking action and designation of officials responsible for resolving the issues.

Before concluding my remarks, I would like to point out that we received lengthy comments from DOE on a draft of our report which strongly disagreed with our findings and recommendations. We believe this disagreement, particularly with regard to the handling of criminal cases, was based primarily on a misunderstanding of our concerns and the actions we are advocating. DOE strongly maintained that recent improvements in its coordination with Justice have completely resolved this issue. However, as pointed out earlier in my statement, the new procedures have not been formalized and no cases have been investigated and referred using them. Therefore, their effectiveness remains to be seen. We plan a follow-up review to test the effectiveness of these operating procedures.

— — — —

Mr. Chairman, this concludes my prepared statement. We will be happy to answer any questions you or members of the Subcommittees may have.

Mr. CONYERS. Is what you are saying here that because they took so long in their investigation that they were running the limitations period?

Mr. PEACH. We think there are instances where, in some of the violations, the statute may run on them. They are getting close to that on some points.

Mr. CONYERS. Do you think that that was deliberate?

Mr. PEACH. No, we found no evidence that it was deliberate.

Mr. CONYERS. Let's read this language.

It was apparent from our detailed review of several case histories that the FEA auditors and investigators pursued the determination of the willfulness of the violation well beyond the point at which the cases could have been referred to Justice.

Now I take it that means that it was pretty clear that the willfulness question could have been resolved much earlier among reasonable men, and that you are making note of that in your report.

Mr. PEACH. Yes, sir, Mr. Chairman, that is our view. We have some case histories which we detail in the report——

Mr. CONYERS. Yes.

Mr. PEACH [continuing]. Which certainly clearly indicate that.

Mr. CONYERS. Let me ask you and Mr. Zipp, what do you attribute the reasons for them pursuing these determinations to well beyond the point at which they may have been referred to the Department of Justice?

Mr. PEACH. I think it basically gets back to the Department of Energy's wanting to follow the cases through to almost their ultimate conclusion, where they think they very clearly have established the willful nature of the violation, and have gathered all the evidence that they think will be necessary to carry the case through to prosecution. Unfortunately, as we heard from the U.S. attorney in Houston who has had to prosecute some of these cases, he felt in many instances he had to redo much of the work in order to get the information he felt was necessary to go to prosecution.

Mr. CONYERS. Mr. Zipp, you were out in the field.

What offering do you make in terms of why this occurred?

Mr. ZIPP. I believe the reason that these cases were delayed is lack of coordination and clear direction of the scope of responsibility between FEA and the Justice Department; and hence our recommendation for written procedures that would identify when a case should be referred, how it should be handled, how far DOE should go in its investigation before bringing in the Justice Department with its investigatory skills.

Mr. CONYERS. I take it that you refrain from suggesting that there was foot-dragging.

Mr. ZIPP. I would rather not characterize it as foot-dragging, because of the evidence I have includes memorandums written back and forth saying the case was not ready. The willfullness had not been determined. The case was not ready for prosecution. Go back and do more work.

Mr. CONYERS. Who was writing such language?

Mr. PEACH. If I could pick up there, Mr. Chairman, and refer also to pages 17 through 19 of our report, which details one case which bounced back and forth for a considerable period of time

between the regional director of the Federal Energy Administration, regional counsel, and the General Counsel's office in Washington. At various times, in other words, the case was forwarded up the chain to someone else saying "We think it is ready to go," and it was then referred back down saying "No, we think you need to go out and to gather some more information."

Mr. CONYERS. Isn't it the Washington enforcement branch of DOE that kept sending these investigations back, especially to Houston and Dallas, for so-called pricing audits which would clearly take months, when that wasn't necessary to make a determination of criminal willfulness? Isn't that the case, in some instances in not many?

Mr. ZIPP. Mr. Chairman, in the case that we are discussing here it was not the Office of Enforcement, but rather the General Counsel's Office that was referring the case back to the region.

Mr. CONYERS. But in other cases, other than the example that we have at page 17, were there other cases when it was the General Counsel or was it the enforcement part of DOE?

Mr. ZIPP. I believe it was the Office of General Counsel. They held cases from being pursued and continued. Violation notices were drafted by the regional offices, forwarded to the national office, and under the procedures that they had in effect at the time it required the national office to issue these violation notices.

Mr. CONYERS. What would they tell the field or the regional offices to do if they referred them back?

Mr. PEACH. Well, there are certain things, like questions of, what kind of intent existed? What kind of knowledge did people have to establish whether or not they were subject to being prosecuted.

I would like to take that opportunity, Mr. Chairman, to talk about one of the things that occurs to me about why we see a need for arrangements to be made to get the Department of Justice involved at an earlier point.

When the Department of Energy feels that they have credible evidence of a willful violation, they establish an investigative plan to determine whether or not in fact they should move to criminal prosecution and refer the case to Justice. It seems that this is the important point to begin to involve the Department of Justice, to get their advice and input into the nature of that investigation, because ultimately they are going to have to prosecute the case. It would seem to me that it is reasonable that the Department of Justice may have some good ideas about the kinds of information that will be needed and will have to be gathered. We don't see that happening.

Mr. CONYERS. Of course, if we are to take the words, the testimony of McNeff, Buchanan, and Hallman, it becomes perfectly clear that there was a very marked disinclination to coordinate or expedite. I mean the distortion was so profound within DOE that they were probably in very poor condition to coordinate with the Department of Justice, and of course we also have evidence previously offered, and I presume you were in the chambers at the time, that suggested that the FBI was not too enthusiastic about even picking up when DOE did invite them to come in.

Did you hear that testimony, by the way?

Mr. PEACH. Yes.

Mr. CONYERS. Did it conflict or offer any points at which it departed radically from the investigations conducted in your office?

Mr. ZIPP. Mr. Chairman, I was present at the interview with the FBI, and I can tell you that there was a major conflict in information that I obtained from both DOE and certain levels of Main Justice, and that conflict specifically is that the FBI is less than satisfied with the results of the DOE auditors in investigating the cases and preparing the referrals.

Specifically, I was told that the FBI had to completely reinvestigate the *Conoco* case and other cases as well, and that the FBI is using only one DOE auditor in the Dallas region—I believe there are two now that were mentioned this morning—simply because their performance as criminal investigators is not effective. The FBI would rather have control over all of the cases that involve resellers.

Mr. CONYERS. I did not understand that to be in any conflict with prior testimony. I thought that is what was testified.

Mr. ZIPP. I guess I am referring to the Justice Department comments on our report.

Mr. CONYERS. I see.

Mr. ZIPP. And the discussions I have had with Main Justice Department.

Mr. CONYERS. Thank you.

Would you care to interject? Tell me your name again, please.

Mr. BOLAND. Kevin Boland, Mr. Chairman. I am Associate Director of the Energy and Minerals Division.

I think it is useful to point out that what we have to work with here is not an awful lot, in terms of number of audits completed. The report points out we have 11 audits completed. Also, most of the audit work was completed during FEA's administration in 1976.

Also, I think it is important to note that FEA procedures are continuing in DOE's requiring that willfulness be pursued, so there was an intent on the part of DOE, at least their official policy, to pursue these cases up to the point where they were ready for prosecution.

The Sporkin task force pointed out very clearly, as the witnesses did today, that FEA was ill-equipped to do that type of investigation. I think all of these things taken together explain some of the reasons why things were going back and forth, even without getting into other intents that people might have had which we did not cover as part of our audit.

Mr. CONYERS. I appreciate your observation. What about the number of cases that might be under audit now? You reported 11 up to September of 1978.

Mr. PEACH. That is right, Mr. Chairman. We reported—give me just a minute. I want to go back to the numbers to make sure we get exactly the right numbers in the record here. The Department overall has identified 592 crude oil resellers. As of September 1978, they had completed audits of only 11. They had referred 9 other cases to Justice, and had 34 audits in process or planned at that point.

Since that time, since September 1978, they have started through March 31, which is our latest information that we have, 39 additional crude oil reseller audits.

Mr. CONYERS. What stage are the audits in?

Mr. PEACH. Most of them are still in process of being completed. We have an analysis that gives some discussion about the amount of effort as best we can determine that is being applied to those audits. Our analysis, based on the information furnished us by the Department, showed they had about the equivalent of one auditor on a part-time basis assigned to 33 of the 39 audits.

Mr. CONYERS. How many years might that take to complete an audit?

Mr. PEACH. Usually they indicate about 6 months per audit, on that kind of basis. As we indicate in our report, we have some question and concern about that level of effort being applied. We think it raises a basic question just from the statistical analysis as to the amount of effort being placed on these cases, but they are still under way, and you would of course have to wait until they are completed for us to be able to evaluate just how adequately the cases were carried through.

Mr. CONYERS. Are you going to continue that investigation, or should a Member of Congress send in another request to you?

Mr. PEACH. I think, Mr. Chairman, and we say later in our testimony, that we are going to have to follow up once again in this area, because, as we were coming to the end of our work, many things were happening in the Department of Energy's program, probably as a result of the kind of interest being expressed by these committees here today, and by the review we were undertaking at Senator Durkin's request.

Things were happening to increase the number of crude oil reseller audits. Things were happening to change the arrangements in terms of how the Department of Justice and the Department of Energy were working with one another. The Department of Justice in November 1978 set up a new energy unit in their fraud section of their criminal division, for the purposes of trying to coordinate at the national level with the Department of Energy.

Mr. CONYERS. We have heard all that before.

Mr. PEACH. Right.

Mr. CONYERS. Let me ask you this: What about the 600 resellers? Is that a figure that is accurate at all? There are about 600 floating out there somewhere.

Mr. PEACH. Someone here may want to add to that?

Mr. CONYERS. Are there more?

Mr. PEACH. That is the number that has been identified by DOE. I would not be sure with any certainty that that is the total universe?

Mr. CONYERS. Would anyone care to——

Mr. BOLAND. I would just add, Mr. Chairman, it is a popular number. I do not know really how much basis in fact it has.

Mr. CONYERS. Are there other parts of the oil industry that could be subject to an audit besides this magical 600?

Mr. PEACH. In terms of the crude oil reseller area?

Mr. CONYERS. Yes.

Mr. PEACH. I think in terms of this area, that comprises the universe as best DOE knows it. There may be others out there. I think they are in the process of possibly being able to identify them.

As the other witnesses have said, we find these kinds of businesses just springing up almost overnight. And they can also disappear in the same kind of fashion.

Mr. CONYERS. Could there be areas other than the crude reseller area in which audits might be appropriate by DOE?

Mr. PEACH. Possibly an area that we have looked at before is the question of the independent producer program. As you know, they did split off in terms of at least the refinery area, for major refiners, and they do have a major effort going in that area, where they have some 600 people assigned. And they have given considerable coverage to that area.

Mr. CONYERS. Mr. Zipp?

Mr. ZIPP. Mr. Chairman, I have a comment here that I think is important to understand the audit process because what you are trying to identify are companies for audit, as opposed to entities. And I think there is a difference, a distinction.

What I would like to suggest is an audit approach that was recommended back in 1976 but, which is only now being implemented. And that is the audit of the transaction as opposed to the audit of the firm. Meaning that when a company was selected for audit the auditors would go in and identify the internal controls of that company to certify the price, and the quality of their bookkeeping and financial record keeping.

However, that is not where the errors are going to be found. They are going to be found between the wellhead and the refiner. And what is needed is an effective audit program that is going to audit the transaction itself, the flow of oil, and everybody that it touches. And then you can identify overcharges and what it should have cost.

Mr. CONYERS. That is recommended in your report?

Mr. ZIPP. No, sir, we did not get into the scope of audit or the audit program from the perspective of technical auditing.

Mr. CONYERS. Well, now, Mr. Peach, in view of all of these new activities that are being rushed to as a result of congressional interest, how do you account for the fact that DOE is reducing the number of auditors from 650 to 250 and now encouraging self-certification?

Mr. PEACH. According to the information we have, Mr. Chairman, while the number of auditors is being reduced from 600 to 250, in this particular area of crude oil resellers, they are going to make a slight increase in their effort. They have about 80-plus people assigned to the crude oil reseller effort and they hope to go up to some 90-plus in crude oil resellers.

So in terms of how they are going to allocate that 250, the information we have shows a slight increase for crude resellers. They will be cutting back in other areas, like independent producers, that are to be covered by the 600 auditors.

Mr. CONYERS. Well, that sounds like the famous "less is more" theory. By reducing from 600 to 250 and adding 80 we will get a more effective product.

Mr. PEACH. At least they show a slight increase in the crude oil reseller area. I think that then raises questions in terms of the adequacy of coverage that will be taking place in other areas that these 600-plus people were supposed to be covering.

Mr. ZIPP. Mr. Chairman, this is, I think, a response on DOE's part to the interest that has been expressed in the crude reseller issue, sort of a brush fire approach.

Obviously, there are other aspects of the enforcement program that are going to suffer. The Sporkin committee reported that there were zero importers audited through July of 1977. We have not examined that issue. But it is safe to assume that that issue is subject to audit and regulation as well as the other programs.

And I take exception to the reduction in audit effort when in fact now is when they are finally getting a handle on what the regulations mean because the unresolved regulatory questions have been a major impediment to audits of resellers up to this point.

Mr. ELSKEN. I just want to add one thing to that, Mr. Chairman.

We recommended in the report that if the current ongoing audits of resellers show a high incidence of violation, DOE should actually increase their audit resources devoted to resellers. Just because they are showing a slight increase over the next 2 years doesn't necessarily mean that is enough.

Mr. CONYERS. Is that included in your report?

Mr. PEACH. Yes, it is, Mr. Chairman.

Mr. CONYERS. When you sought the Department of Justice comments, did anybody remind the Department of Justice that they are required by statute to oversee criminal investigations by agencies like the Department of Energy?

Mr. PEACH. We tried to remind them by pointing out quite clearly in our report, the responsibilities which they on numerous occasions have stated that they have. And we find strangely inconsistent some of the comments made by the Department of Justice, in light of that responsibility.

Mr. CONYERS. What were those comments? Let's discuss the comments.

Mr. ZIPP. Their basic position was there is no need for a written agreement that would specify the procedures on referrals, and I cannot imagine how anyone would object to writing down what should be the procedure.

Further, they were satisfied with the current referral process which requires DOE to make a determination of the willfulness of a violation before referral is made. And this is another area where we take exception in that a determination of willfulness is a criminal investigation and determination.

Mr. PEACH. There are two other specific areas, too, that cause us concern, Mr. Chairman. First, at the point in time when an investigative plan is developed, DOE has credible evidence, as we understand it, of possible criminal activity. And we believe that is an appropriate time for Justice to be involved with their advice and assistance, and we don't see that kind of agreement.

Second, we think that we can explore further the opportunities for people at the regional level to have communication, the assistant U.S. attorneys, and the people at the regional level of the Department of Energy fairly early on, whenever they feel they

have evidence of criminal activity in the area. We see disagreement in this area also.

Mr. CONYERS. Please proceed.

Mr. PEACH. That completes our answer to that particular question, Mr. Chairman.

Mr. CONYERS. But what about your attempt in terms of the Fuller report? I am sorry. We were sidetracked.

Mr. PEACH. That is all right. I almost lost my place.

The Department of Energy has made organizational changes and, we are told, developed informal procedures to improve the referral of cases to the Department of Justice.

The fact remains, however, that the Department's written procedures regarding referral of crude oil resellers have not changed and the risks of these procedures producing the same adverse effects as FEA experienced are very real.

Also, there is no assurance that the operating practices we are told are in place are in line with overall departmental policy and will continue regardless of personnel changes. Because no new crude oil reseller cases have been referred to the Department of Justice under this new system, we are not able to determine its effectiveness.

The Justice Department has also taken steps to promote closer coordination with DOE, such as the creation of an energy unit within the Fraud Section of the Criminal Division to receive referrals from DOE and to maintain liaison with all U.S. attorneys handling DOE cases. We believe such actions are on target and provide an appropriate framework for closer coordination. But they still do not take the place of written procedures and they do not go far enough.

We are recommending that the Secretary of Energy enter into a memorandum of understanding with the Attorney General to establish written procedures for referring criminal cases to the Department of Justice which assure that the responsibilities of the two departments are clearly delineated. Among other things, the procedures should provide for timely and meaningful involvement by Justice in key decisions affecting the scope of, and approach to, criminal investigations.

We are also recommending that the Attorney General review opportunities to expand informal coordination channels with DOE to include regional level discussions of cases before formal referral.

Now as to the adequacy of audit coverage.

Mr. CONYERS. Before you move into that area, let me try one out for size.

Did the Department of Justice state to you in effect that it would be pointless for Justice or the FBI to develop these cases before the Department of Energy has had the first crack at it? Was that their essential position?

Mr. ZIPP. If you could perhaps rephrase your question along the lines of before DOE has completed its civil investigation, I think as opposed to——

Mr. CONYERS. That is closer to the gist of some of the remarks that Justice made to you?

Mr. ZIPP. When you deal with Justice, I think there are three entities that we have dealt with that have three independent posi-

tions. One is the U.S. attorney. The other is Main Justice. And the third is the FBI.

Mr. CONYERS. We find the same thing. We add also the regional people, maybe coming from a completely different point of view.

Mr. ZIPP. That is correct. It makes it a bit frustrating when you are trying to understand what the policies really are. In any event, the FBI and the U.S. attorney are the ones who conduct the investigations and actually prosecute cases. Main Justice serves more, in this regard, an administrative function to serve as a conduit to handle cases.

Mr. CONYERS. Do you ever get the impression that the Main Justice is considered to be unduly interfering with (a) it is interfering with the U.S. attorney, or (b) not giving the U.S. attorney out in the field the resources it needs to move forward in their case?

Mr. ZIPP. I don't want to characterize it as interfering, because I am sure that——

Mr. CONYERS. Well, we will use shorter language.

Mr. ZIPP. Your point is very valid. I will give you an example.

One of the examples that we use in our report is the export-import case, which was discussed today. That case was objected to by Justice as being meaningless because they have declined prosecution.

In reviewing the referral memorandum itself, Justice apparently was unaware that the U.S. District Court in Alabama had requested that case for a proceeding that it was involved with. This was apparently unknown to Main Justice. But that was the reason for the referral in 1978.

Mr. CONYERS. Are you gentlemen aware that the U.S. attorney, presidentially appointed, can thumb his nose at the Department of Justice central if he so chooses?

Mr. ZIPP. Yes, sir. I am told that he is under the guidance of the Deputy Attorney General, but that if he declines to prosecute a case, it cannot be prosecuted in that venue. It must be moved to a different jurisdiction.

Mr. CONYERS. So that declinations are almost within the sole purview of the district U.S. attorney?

Mr. ZIPP. Yes, sir, that is my understanding.

Mr. CONYERS. And the prioritizing of prosecutions are also within the jurisdiction of the district U.S. attorney?

Mr. ZIPP. I——

Mr. CONYERS. And that the determination as to which cases to prosecute within his prioritizing is again a matter that falls within the discretion of the U.S. attorney. Isn't that correct?

Mr. ZIPP. That is my understanding of the process, yes, sir.

Mr. CONYERS. So where does Central Justice come in anyway?

Mr. ZIPP. I am told that their function is to assign venue to the case and to distribute cases among the regional U.S. attorneys.

Mr. BOLAND. Maybe I could follow up on that in a more general way.

But I think directly related to your question, it is clear from statements made directly to me by the head of the energy unit in the Criminal Division of Justice, and by the Assistant Administrator of DOE's Enforcement Division, that they like things as they are, meaning that they control the situations at a headquarters

level, and prefer that contact, in fact require, at least DOE procedures require that regional auditors and investigators, have absolutely no contact with Justice Department U.S. attorneys, and FBI, in the field, without first getting the approval of the DOE General Counsel.

And that has been a policy, that has been a written policy by FEA. It has been continued by DOE. And I am sure, at least the individuals that I have talked to would prefer it that way. Their explanation is that they can control the situations and make better sense out of how to prioritize the work.

Mr. CONYERS. Do you think that there should have been more than 11 audits in some 3 or 4 years?

Mr. BOLAND. Absolutely.

Mr. CONYERS. Is there any reason why everybody shouldn't have been audited at least once, and some more frequently, and usually, given the nature of the business, and the large demand for crude oil, and the spontaneous nature of resellers coming into and out of the business as the profiteering picture may present itself?

Mr. PEACH. I don't think there is any doubt that there should have been more audits, Mr. Chairman. I think if I can go back to our work 4 or 5 years ago, we looked early on at their programs and found concentration at the retail level with an ignoring of the producers where there was opportunity, in terms of classifying oil as old or new for potential large violations. DOE also ignored the refinery area.

They have since mounted a major effort in the refinery area which has been going on for some time. We have not examined that effort in detail, but in the producers' area, particularly in the crude oil resellers' area, the record was not good.

Mr. CONYERS. Chairman Dingell has made that comment to me in the course of these hearings, and what we have in effect is a failure of decontrol, so that in some areas of the oil industry there are prices, domestic prices that are already moving toward the world price of oil, even before decontrol.

We are in an incredible situation—on product. Certain products are already moving because of some of the problems it seems to me that are directly traceable to failure to audit, failure to investigate, failure to prosecute, the areas in which your rather excellent study was based.

Mr. PEACH. I would point out, too, a question in these days that we are experiencing now. That the tighter the supply situation, the more the potential for a boost in this particular area because you not only have what is called the so-called world market price, but also the spot prices that begin to be picked up by people when they really feel they need the product.

Mr. CONYERS. And heaven knows where a spot price may go.

Mr. BOLAND. Let me say that the program, the enforcement program, has been one of shifting priorities. It has been somewhat like a balloon.

We have been up here testifying year after year saying that DOE, FEA, and predecessor agencies, have not been giving adequate attention to the overall enforcement area. The type of knee jerk reaction that we get now is to shift priorities and concentrate

more on one enforcement area at the expense of other enforcement areas.

Mr. CONYERS. I really question how much all of this reshuffling inside of DOE and the Department of Justice is going to mean.

What we are really being asked is to wait another year to see how it works out. I mean how can we make any assessment as to whether these policies are going to be any more effective than all the changes that came from the rumbling of all the years before, your reports, our investigation—the Dingell subcommittee has been in this at least 3 years.

Mr. PEACH. I wish I could offer some assurance——

Mr. CONYERS. This becomes an annual circus, in which after 12 or 18 months everybody comes before us and says there is a new deal, we are going to change everything, and frequently the personnel, more importantly, have been changed, which we have had testimony to the effect that it seriously injures any investigative and prosecutoral efforts.

Mr. ZIPP. Mr. Chairman, I would like to comment on something you did say that is very important, and that is a response to the heat, if you will.

Generally agencies will agree with our reports, and then take no action. In this case, the agency disagreed with our report, and is making all kinds of changes, and I must point out that——

Mr. CONYERS. That is an encouraging sign from your point of view.

Mr. ZIPP. Yes, it is. They did not agree with the report and the issue at hand. However, they have in fact been very, very responsive to suggestions we have made along the way. They have rewritten completely their crude oil reseller enforcement manual. They have issued guidelines for the unresolved regulatory issues, at least in some cases.

They have issued violation notices, and that has been encouraging. They sent one case to Justice in November, which we were mentioning quite often as to why it was not referred. There have been many substantive changes.

They are now communicating with Justice, providing at least some paperwork back and forth at our suggestion. We have made a number of suggestions which they have implemented immediately.

Mr. DINGELL. Mr. Chairman—you made, sir, I think, a very interesting comment. You said they are now communicating with the Department of Justice. One of the things that appears to have been a source of concern to all of us here in this investigation has been the fact that there appeared to be some prohibitory instructions as regards DOE's field forces from communicating to their colleagues in the Department of Justice, or in the IRS, or in other Federal enforcement agencies that had parallel or commensurate responsibilities.

Did you find that there was any prohibition against the field people at DOE communicating with field people at Justice Department?

Mr. PEACH. Yes, Mr. Chairman. We did.

Mr. DINGELL. You did?

Mr. PEACH. If I can read to you for purposes of the record, the current provision in the enforcement manual, in the Department of Energy, it says:

> Under no circumstances should a regional office itself formally or informally take a case to the Department of Justice including local U.S. attorneys and the FBI. In relation to investigation of cases, the Office of General Counsel will be the only contact with the Department of Justice.

That has been a provision that has existed from a procedural standpoint since FEA, in somewhat different language at different times. But essentially the same.

Mr. DINGELL. Did you find this to be in conformity with law, this particular rule in the DOE's manual on these matters?

Mr. PEACH. I don't know that we tested it from the standpoint of whether it is in conformity with law. I don't know of any legal reason or prohibition against arrangements existing for people at the regional level to have contact with the assistant U.S. attorneys.

Mr. DINGELL. Did you find that other agencies of Government are similarly afflicted with this kind of curious procedure, and this kind of interesting instructions?

Mr. PEACH. Again, I did not test it with other agencies in Government.

I can tell you what the policy of the General Accounting Office is when we find evidence in the course of doing any of our work; when we find evidence of criminal activity, our policy is to refer it at the earliest moment to the Department of Justice, and get it involved because we see it as the proper agency to be involved in making judgments and decisions as to questions of prosecution.

Mr. DINGELL. Are you aware of any other Government agency that has this kind of prohibition?

Mr. PEACH. I am not directly aware of any. I will ask my colleagues at the table.

Mr. DINGELL. Would any of your associates speak to that?

Mr. ZIPP. Let me elaborate somewhat on your line of questioning.

Mr. DINGELL. Excuse me. Perhaps at the same time, do you regard this as good administration?

Mr. ZIPP. Categorically, no.

Mr. DINGELL. Sir?

Mr. ZIPP. Categorically, no; I do not think it is good administration.

Mr. DINGELL. It seems to be intolerably bad administration.

Mr. ZIPP. Yes, sir, I would tend to agree substantially.

Mr. DINGELL. What about other Government agencies?

Mr. ZIPP. That is the point that I wanted to raise. That is, in the DOE comments to our report they cite the Securities and Exchange Commission and the Internal Revenue Service as having similar responsibilities and similar relationships with Justice. In other words, conducting their own criminal investigations.

I believe we take exception along certain lines, and that is the responsibility. The statutory responsibility of those agencies, such as the Coast Guard, Internal Revenue Service, et cetera, and others, have specific statutory authority to conduct criminal investigations and to prosecute their own cases.

I do not believe that DOE shares that responsibility in the criminal investigatory area. As a matter of fact, the Sporkin report

identified a need for DOE to be able to handle its own—the prosecution of its own civil cases. But DOE does not have the authority to prosecute its own criminal cases as stated in their own procedures manual and Justice must prosecute those cases.

Mr. CONYERS. So for them to directly and explicitly discourage their authorities, their investigating authorities, from cooperating with the Department of Justice and the Attorney General, flies directly in the face of 28 U.S.C. section 515, which confers this authority on the Attorney General.

I admit that it doesn't say the Attorney General has to wait for the Department of Energy enforcement people to send him a case. But it seems quite peculiar to me that the Department of Energy would specifically preclude their authorities from referring these matters to the Attorney General.

Mr. ZIPP. Well, Mr. Chairman——

Mr. DINGELL. Isn't it even more remarkable that they won't allow any interchange of information right at the level where events are going forward between the other agencies that might be interested or might have authorities?

Mr. PEACH. We find it to be of interest. For whatever reason the determination was made that they wanted to have control over this at the central level, in the General Counsel's office, in the Department of Energy.

Mr. DINGELL. As I remember, Lincoln tried to do something like that during the Civil War, and Lyndon Johnson tried it in Vietnam, and neither fared very well until they changed their policy.

Mr. PEACH. As we heard earlier in the testimony today, Mr. Chairman, you get into this question of the local U.S. attorney, the attorney that must prosecute the case, saying that they have had to do many of these things because there is information that needs to be gathered that has not been gathered in the pursuit by DOE doing whatever they did with the case.

Often the U.S. attorney is making decisions to proceed on the basis of not just the violation of DOE regulations but also in areas such as mail fraud, and criminal bribery. And if those are issues that must be considered, in deciding on criminal prosecution, then the people who are following the track of trying to develop the evidence need to know what kind of information they need to get for that.

If the Department of Justice is not helping by providing advice and assistance in that area, maybe we are wasting some effort here in these audits, and maybe this is why some of these things bounce back and forth in saying, hey, we need some more information here, we haven't got all the right data.

Mr. BOLAND. I might say one of the arguments presented by the Justice Department, at least one individual within the Criminal Division, is that it provides a better control and better prioritizing of cases when they are assigned to U.S. attorneys.

Mr. DINGELL. It goes from DOE's field people up to the Washington folks, then across to the Department of Justice's folks, then back on down to the Department of Justice field folks?

Mr. BOLAND. That is right.

Mr. DINGELL. That is a better way?

Mr. BOLAND. That is what they purport.

Mr. DINGELL. I am sure that a Washington bureaucrat would say that.

Mr. BOLAND. It seems to be inconsistent to us with what the Associate Attorney General before your committee testified just this past February, that it is the statutory responsibility of Justice to supervise such investigations. The very type of investigations that DOE is carrying out at the regional level.

Mr. DINGELL. I gather that under these splendid instructions, were the folks from DOE in the field to see a bank holdup which is a violation of Federal statute going on, they would forthwith, therefore, have to communicate it to the folks in Washington who in turn would communicate it to the Justice folks in Washington, who in turn would communicate back to the field.

I am not sure that would do much for law enforcement.

Mr. BOLAND. Let me just add. We cannot understand the rationale—although rather than make a very definite recommendation that DOE expand their communication at the Justice local level to U.S. attorneys and the FBI, we make a recommendation in our report that the Attorney General review this matter and report to the Congress.

Mr. DINGELL. I am sure that that will be approached with great lack of diligence by the Attorney General. You have made also a number of recommendations in the scope of review, you went into a number of items at page 9. I found this to be a very useful list of matters to be undertaken.

You did not, however, gentlemen, go into three items, four items which I find of interest. DOE's practices for determining that a case involved a criminal violation, the effectiveness of Justice's performance in handling criminal cases, individual company audits, or the magnitude of the impact of the unresolved regulatory issues.

Don't you think that those would be useful questions?

Mr. ZIPP. Mr. Chairman, if I could respond to that, since I had the responsibility for planning the scope of this review. We did not look at those areas, only because of the restricted scope that Senator Durkin placed on us. He requested a 30-day turnaround time to explain why all of the cases that had been referred to Justice were delayed as long as they were.

In the course of developing our information along those lines, to be responsive to his limited request, we expanded the scope of our own audit to provide at least a fuller explanation of what was involved. Consequently, it took a lot longer than was desired to respond to that issue. Those issues take a lot more audit effort and time.

Mr. CONYERS. Can I and the subcommittee chairman on Energy and Power make that request to you right now? Or would you like a letter which we will give you?

Mr. BOLAND. I would just like to follow up before——

Mr. CONYERS. We can appreciate the limitation of this request.

Mr. BOLAND. I would rather further explain why the scope was limited as such. We were looking at referrals to Justice. Those referrals involved audit activities that were conducted by the Federal Energy Administration—although it might be an artificial

distinction, it is one made by present DOE officials that it was a past administration.

We wanted to limit our investigation as to what was happening now, by those officials who were responsible for current activities, so we would not fall victim to that same argument. I think it would be better to review cases after those cases, and, hopefully, there will be some, that the new cases audited and investigated by DOE, under their current procedures, are referred to the Department of Justice.

And at that time we can put to rest the question of how responsible officials are now versus those in the past.

Mr. DINGELL. Well, it occurs to me that perhaps we should see to it that we communicate with you in writing on this. Perhaps our staffers will be discussing with you the communications you will be receiving from us, so we can draft a request that will make good sense from both your viewpoint and ours.

Does that conform with your judgment?

Mr. PEACH. Yes, Mr. Chairman. We can work with your staff as to the appropriate time to follow up on the scope of what you are interested in looking at. We definitely see a need to follow up, at a point where they have established some track record in terms of this increased activity that is taking place and at an early date.

Mr. DINGELL. I detect no great increase in activity here. If you are prepared to disabuse me of that, I would be very happy to be so disabused.

Mr. PEACH. Well, in the period since November, actually since last September, there has been activity at least in terms of more cases being started. Although as I indicate from a statistical analysis, we have some question as to how aggressively those are being pursued, even though they have been started. There are new arrangements that exist for how the Department of Energy and Department of Justice at least in a formal sense will work with each other. We haven't had a chance to test those in terms of actual cases to see if they produce results. The question is whether they can produce results.

Irrespective, we make recommendations on the need to change procedures, update them and improve them, but I think the question would be looking at cases and seeing how fast they are moving, and whether or not they are going to Justice in a reasonable period of time and whether or not Justice can act on them when they get there.

Mr. DINGELL. You made a very good comment that I ascertained here. "Estimated audit staff," you have compared fiscal year 1978 versus 1980 on page 8. I find that impressive. I detect that the field staff is being diminished from 545 to 227, headquarters staff is being diminished from 137 to 25, a total of 1,294 personnel are being diminished to 864. Did you find that they were overloaded with personnel under the number of 1,294?

Mr. PEACH. No. We have continually said that they needed a more aggressive effort in the enforcement area, where the big cut is taking place. Of course, they are keeping the 612 people involved in the major refiners program under the Office of Special Counsel as a special effort. One thing that they are doing, as we pointed out earlier, is that while they are cutting back in these other areas,

their detailed plans indicate that they are going to increase the people working on crude oil resellers from about 82 to 91, while they will be cutting back in other areas like independent oil producers, importers, and other areas like that. I think there are questions about whether this cutback should take place.

Mr. DINGELL. I would appreciate it if after more thoughts you would give us some comments that might be of use in further amplifying your view on that point.

Mr. ZIPP. Mr. Chairman, I would like to add to that just one brief comment. That is, of these additional people that are being provided to the crude oil resellers program, many of those, half in the current year and about 38 percent in the following year, are devoted to the special investigations, criminal wilfullness investigations as opposed to financial audits or pricing audits, if you will.

Mr. DINGELL. As I understand the law, DOE has two options in these matters. One is to engage in criminal prosecution in which willfulness must be established. In the other instance DOE must proceed through a civil process. The penalty, as I understand it, for a criminal violation is relatively a modest one in that the fine is not overly large, but I do detect that the civil penalty is triple damages which are to be paid in the Treasury. Am I correct in that understanding?

Mr. ZIPP. Pardon me, DOE does not have the authority to bring criminal prosecutions.

Mr. DINGELL. DOE has the authority to decide what it will recommend to the Department of Justice?

Mr. ZIPP. That is correct.

Mr. DINGELL. DOE then can choose to go to the civil penalty in which they can recoup very large amounts of money without establishing willfulness; isn't that correct?

Mr. ZIPP. Yes, sir.

Mr. DINGELL. Willfulness is quite a difficult matter as a matter of law to establish, is it not?

Mr. ZIPP. Yes, sir, and apparently the determination of a violation is also difficult.

Mr. DINGELL. It uses considerable more time both in terms of establishing the crime and in terms of the criminal prosecution itself; isn't that right?

Mr. ZIPP. Yes, sir. But, again, the determination of a violation has been very difficult, because of the regulations and the questions that the regulations have posed.

Mr. DINGELL. Right, and the willfulness is, therefore, the more difficult to establish. DOE has used larger numbers of personnel to establish the criminal wrongdoing, because they have gone to establish the willfulness question; is that not right?

Mr. ZIPP. Yes, sir, that is correct.

Mr. DINGELL. Now, is it ordinarily a responsibility of the Federal regulatory agency to establish willfulness, or do they simply establish a pattern which appears to be sufficient to refer the matter to the Department of Justice?

Mr. PEACH. In most instances, many agencies, that is the pattern. It is the pattern we use in the GAO. We establish a pattern of evidence that indicates criminal activity.

Mr. DINGELL. Turn it over to the Department of Justice?

Mr. ZIPP. That is right.

Mr. DINGELL. In other words, you don't try to prove up the entire case; is that correct?

Mr. ZIPP. That is correct.

Mr. DINGELL. Isn't it a little bit curious that DOE has gone to establish the willfulness, as opposed to simply establishing the pattern which could then be refererred to the Department of Justice?

Mr. ZIPP. We have some concern about the amount of emphasis there. However, Mr. Chairman, I guess I don't reject out of hand the idea that they should be doing some work in this area.

Mr. DINGELL. I don't have any objection, but since they are incapable of talking to the Department of Justice folks on the local level in any event, it doesn't seem to be of great importance, does it?

Mr. ZIPP. I would agree that is a real problem. In other words, if the Department of Energy is going to be in the business of carrying through a portion of the criminal investigation, it seems they need assistance and input from Justice in terms of what they are looking for, and how to pursue it. This kind of involvement is needed.

Mr. DINGELL. Mr. Peach, you have made a number of recommendations to the several agencies. They have responded, DOE and Department of Justice. I confess myself somewhat unimpressed by the responses. Can you give us your comment, not at this particular time, but in writing at a time which would suit you, regarding the points that have been raised by the two agencies in response to your comments? They are embodied in your rather excellent report which I have been derelict in not commending you for at a time earlier.

Mr. PEACH. We would be pleased to.

Mr. DINGELL. I think it would be tremendously helpful.

Mr. Chairman, I thank you.

Mr. CONYERS. You are more than welcome, Mr. Chairman.

Gentlemen, was there reference made to the daisy chain operation in your report?

Mr. PEACH. Yes, we do. We make reference to it and include a description of just exactly how that particular arrangement may work, plus some case examples again.

Mr. CONYERS. And how has that been handled in summary by the Department of Energy, the investigations of these kinds of cases?

Mr. ZIPP. From my discussions with regional personnel and headquarters personnel, I wouldn't say they have been very effective up to the current date. The past audit procedures required an audit only within the firm. Under the current audit approach, as opposed to the audit of a firm, I am told, that they are auditing the transactions from firm to firm in which case the daisy chain operations will reveal themselves.

Mr. CONYERS. Has some of the mishandling of these investigations raised a question of whether there was or was not circumstantial evidence that some officials in DOE failed to forcibly and on a timely basis deal with these investigations?

Mr. PEACH. We didn't find any evidence that would lead us to that conclusion. In other words, I think if we had found evidence

indicating someone was being derelict in his responsibilities or otherwise involved in situations such as some of the ones discussed earlier, we would have referred that matter to the Department of Justice with the information.

Mr. CONYERS. That is quite a judgmental matter, isn't it, where bungling and the line of deliberate or malfeasance of duty occurs? Isn't that a rather racy line?

Mr. ZIPP. Mr. Chairman, the FBI discussed this with us at a meeting, and this very question was raised. I think if I could remember their words, they said there is no law aginst ignorance and dereliction of duty. There is, only, if there is criminal intent to—I am trying to paraphrase them and remember their words, but in any event, what the FBI said was it is not illegal to be incompetent in your job, or to do it ineffectively. Consequently they could not pursue the allegations of malfeasance along criminal lines.

Mr. CONYERS. Only unless it is criminally deliberate?

Mr. ZIPP. Yes, sir.

Mr. CONYERS. The question occurs as to how you can tell. It is very difficult to tell.

Mr. ZIPP. The point that was raised was that until a crime has been committed, the FBI cannot investigate an allegation of dereliction of duty, and what I might point out is that——

Mr. CONYERS. Well, no, they can investigate it, but criminal malfeasance is itself a crime.

Mr. ZIPP. If there is an intent to deliberately be derelict in your responsibilities.

Mr. CONYERS. And I am suggesting that that is a very difficult line for not only you but for even the FBI——

Mr. ZIPP. Yes, sir.

Mr. CONYERS [continuing]. To determine.

Mr. ZIPP. There is no question, but in the case, for example, that we have identified here, if there was an individual who was aggressive and zealous in performing his responsibilities of enforcing the law, it seems to me that that case would have been referred to Justice in 1976. The regional counsel recommended it on more than one occasion. The regional director of compliance recommended referral to Justice on more than one occasion, and yet it was continually referred back to the region for additional work, and not to Justice. It seems to me that case clearly should have been consulted at least with Justice. You had two attorneys making that recommendation that were on the field audit site, who saw what was happening, and the auditors report concluded almost identically to the referral to Justice in 1978.

Mr. CONYERS. How many daisy chain investigations have been covered by the Department of Energy, according to your own investigation?

Mr. ZIPP. The nine cases that have been referred to Justice, which involve more than one company each, but that is the extent.

Mr. CONYERS. Well, those were the ones referred for criminal prosecution. The question is, How many investigations were there that were not referred?

Mr. ZIPP. Eleven others as of September 1978. We have statistics where we discuss all of the closed cases through March of 1979.

There were 28 closed cases and they are discussed in our report as to what happened to those cases. Half of those were terminated before completion.

Mr. DINGELL. Mr. Chairman, would you yield? On daisy chain cases, it is possible to engage in a civil action and a criminal action, is it not?

Mr. ZIPP. Yes, sir, that is true.

Mr. DINGELL. Civil action is easier, quicker, and you can get treble damages for it; is that right?

Mr. ZIPP. Yes, sir, that is my understanding.

Mr. DINGELL. In a criminal case, you must establish a case by a fair preponderance of the evidence; is that right?

Mr. ZIPP. I believe that is true, yes, sir.

Mr. DINGELL. And in a criminal case it is beyond a reasonable doubt.

Mr. ZIPP. And a jury must convict.

Mr. DINGELL. And a jury must convict. The other is done by a matter of assessment?

Mr. ZIPP. Subject to appeal, yes, sir. It is an administrative decision.

Mr. DINGELL. Am I incorrect in the assumption that these folks that have been daisy chaining would be probably put on probation if they are convicted, and that the fine would be relatively small by reason of the small size of the firm, since they are resellers as opposed to being major oil companies, or at least were in most instances? Wouldn't we as a matter of general policy, be better served to proceed through the civil mechanism to achieve a civil penalty, and extort from them the money which they have incorrectly extorted from the public at large?

Mr. ZIPP. Yes, sir, in my judgment that would be the way to go. But there is a problem that you have got to recognize, the civil penalties are, I believe $20,000 per violation, and I believe a violation is identified as a transaction, and a transaction, as you identified today, could result in millions of dollars of excess profits.

Mr. DINGELL. Once that was established, though, you could proceed to sue for treble damages, could you not?

Mr. ZIPP. Yes, sir.

Mr. BOLAND. At a minimum a greater concentration on audit, civil audit, would give us a better idea of what the extent of violation is in this area. We don't have that. All we have is 11 completed cases and 9 referrals to Justice.

Mr. DINGELL. Gentlemen, if you would refer to your appendix 2, page 3, you will see GAO recommendations for the expansion of informal communication channels to provide for discussion between U.S. attorney's offices and DOE regional offices. In this the Department of Justice says as follows at the end of the first paragraph following: "There is no informal communication between DOE regional offices and the local U.S. attorneys. DOJ specifically requested that there be none for the reasons stated below." Then comes a most interesting paragraph which says that they have now an energy unit in, "The Fraud Section of the Criminal Division to establish liaison with DOE at the national level and coordinate the handling of criminal referrals." I find this unpersuasive, particularly since they would much prefer to have matters start at the

regional DOE office, be communicated up to the national DOE office, be communicated across to the Department of Justice office, then be communicated down to the Department of Justice field office with the response or any other communication initiating in precisely the same fashion.

Now I detect that that would occasion a period of review at each level plus the traveltime; am I correct?

Mr. ZIPP. Yes, sir, that is accurate.

Mr. DINGELL. How long would it take for a simple communication of that in the field level of DOE to get up through this phase and back down to the Department of Justice, and how long would it take the Department of Justice's communication in response back to the field folks at DOE to traverse this long and dismal distance?

Mr. PEACH. I think from a hypothetical sense, Mr. Chairman, it is a convoluted way to approach it. I think the only way to look at it is to look at actual cases that are happening and see just how quickly it can move through this chain.

Mr. DINGELL. It is reminiscent of "Alice in Wonderland." Now proceed.

Mr. ZIPP. Mr. Chairman, the comment that Justice made to our report that it was at their request that this policy of no discussions at the regional level be implemented, I am not sure that that is accurate, because that policy was in effect with DOE many, many years before any discussion with Justice. In my discussions with Deputy Assistant Attorney General John Keeney, he informed me the first contact Justice ever had with DOE was when the special counsel, Paul Bloom, approached him concerning the *Conoco* referral.

That was in the latter part of 1977. This policy of nondiscussion at the local level was also the subject of Senator Kennedy's hearings in 1975, at which time it was discussed at length about auditors who had referred cases directly to the FBI and had been chastised greatly by FEA, that it was a very serious breach of agency policy.

Mr. DINGELL. How long would this communication take from DOE field folks to the Department of Justice field folks? A goodly period, would it not?

Mr. ZIPP. If you go on the basis of past experience it could be months and years.

Mr. DINGELL. Months and years?

Mr. PEACH. The question is how quickly it gets referred over. If it gets to a process as we have seen in the past of where it comes up from the region to DOE's general counsel's office and then is sent back, for further work to be done before it is ready for referral to Justice, even though the region may have felt it was ready to be referred and some discussion to take place, then we have seen cases bounce back and forth for months or years before referral.

Mr. DINGELL. Before it ever got to the other agency?

Mr. PEACH. Before it ever got to the other agency.

Mr. DINGELL. And of course there is a possibility of bounce back between the Washington offices of DOE and DOJ?

Mr. PEACH. Right. I think Mr. Canales in his testimony mentioned the case that I wasn't aware of in terms of something that

was referred to the Department of Justice and then it was some matter of months before he was aware of it in his position as the U.S. attorney that would have to prosecute the case.

Mr. DINGELL. We will look with great interest upon the comments of the Department of Justice. If my good friend and chairman would permit just one more brief question, I detect resellers are a creature of recent prominence, that until 1972 or 1973 there were virtually none, and that they have since blossomed mightily. Am I correct in that?

Mr. PEACH. Yes, Mr. Chairman, I think there were some people that were legitimately in the reseller business providing some services. They had gathering lines, they had storage and other things that they could offer as a part of what they were doing in the business, but after the embargo, during that period, it blossomed very quickly to the point of where we had this number of about 592.

Mr. DINGELL. Now looking hopefully toward prevention of future rascality, may we anticipate that that could be headed off better by regulating resellers, or by banning the practice for those who do not have facilities or provide services, and so as to avoid those who simply move paper and collect money?

Mr. ZIPP. Mr. Chairman——

Mr. DINGELL. Or coin money, I should say. Pardon me, go ahead.

Mr. ZIPP. You are right on target; and DOE has issued new regulations that were effective January 1, 1978, that literally prohibit a reseller from entering the chain which provides no services. It allows them no markup. These are under the new regulations called subpart (L), which are totally ineffective with regard to the resellers that existed prior to——

Mr. CONYERS. Are they effective now, in operation?

Mr. ZIPP. Yes, they are effective. If those regulations are enforced then they will effectively—I shouldn't be so emphatic. They should effectively prevent resellers that provide no economic benefit from emerging.

Mr. DINGELL. I detect my good friend here is coming forward with the same question that I am coming forward with and that is, are these regulations effective? Have you reviewed them to find out whether they are doing anything? Regulations are nice, but effective regulations are better.

Mr. ZIPP. Yes, sir, we plan to follow up, but many of the problems that existed with the prior regulations currently exist with the new regulations. Specifically with regard to the allowable margin of crude oil resellers, the regulations require DOE to determine what is allowable in the way of margin, and I am told that they haven't done it yet.

Mr. DINGELL. You are told what?

Mr. ZIPP. That they have not determined what the allowable margin is, and it is a year and a half since the regulations became effective.

Mr. DINGELL. How long has the regulation been in place?

Mr. ZIPP. A year and a half.

Mr. DINGELL. And they have not yet determined what is the allowable margin?

Mr. ZIPP. Yes, sir. We need to follow up on this to determine the extent of it, but we were told this just recently as being a problem that the auditors are having in trying to audit under the new regulations, in that the DOE determination of a profit margin has not been made.

Mr. DINGELL. I am curious why anyone need even be in the chain if he is providing no service.

Mr. ZIPP. Well, there is obviously no need from a business point of view. Obviously you want to sell your product at the highest price that you can, and a buyer wants to buy it at the lowest price he can, and the meeting of the minds would require no intermediaries or the minimum of intermediaries in order to maximize the profit potential of both companies, buyer and seller. So, from a business perspective, there is absolutely no reason for an intermediary or more than one intermediary.

Another point too, and that is that the allocation regulations prohibit such practices by locking in the purchaser and supplier relationships that existed before the embargo period.

Mr. DINGELL. That is precisely the point I make. As I understand the allocation regulation, on regulated petroleum products, and that is for both the crude and products such as gasoline which is under control now, the allocation regulations establish a relationship to which the parties are literally bound?

Mr. ZIPP. Yes, sir.

Mr. DINGELL. Is that not so?

Mr. ZIPP. That is correct; and I was curious as to how the daisy chain could exist, and I did pose this question to DOE and pursued it quite vigorously, because in the case that we have identified in our report, there was a previous recipient of the crude oil who is not on the chart, and that recipient was notified by the producer that he would no longer be providing oil to that buyer. That buyer then said wait, the regulations say you cannot do that, and he filed suit in district court.

Subsequently, that lawsuit was dropped, and I believe that previous purchaser was then made part of one of the companies in the chain.

Mr. DINGELL. You mean in the daisy chain?

Mr. ZIPP. Yes, sir. Now I pose that to——

Mr. DINGELL. A very happy place.

Mr. ZIPP. Yes, sir. I posed that to the Office of Special Investigations at one of our large meetings that we had many of, and I asked why did you not enforce this? You had knowledge of it because the auditors brought this to your attention. And the response was, they cannot pursue a breach of the supplier-purchaser relationship unless there is a complaint by someone, and in this case, since the complaint was dropped, they decided not to pursue it. Their policy was that unless there was a complaint they would not try to enforce that regulation.

Mr. DINGELL. Are you telling me that if the allocation regulations are enforced according to their terms, that the whole matter of daisy chaining could be prevented?

Mr. ZIPP. In my judgment a substantial portion could have been prevented, yes, sir.

Mr. DINGELL. Thank you, sir.

Thank you, Mr. Chairman.

Mr. CONYERS. We are indebted to the chairman of the Subcommittee of Energy and Power for that line of questioning that he has introduced into the record.

Let me refer to a comment that Dr. Frank Collins of the Oil, Chemical & Atomic Workers made to me recently. He said this equation of buyer-seller, highest-lowest price, highest price, is sort of a textbook economic theory, because frequently in this real world of oil the buyer does not care if he purchases it at the lowest price or not, because he is going to pass it on anyway.

As a matter of fact, that is precisely where the opportunity for this illegal activity comes in, isn't it?

Mr. ZIPP. Yes, sir.

To expand somewhat in this regard, the regulations do encourage the lack of economy in the market, simply because they allow this pass-through. It is a captive audience and it is a captive market. If there was competition, you would not have the need for it, and there would be no incentive to buy high-priced oil.

Mr. CONYERS. Exactly.

I have one question before I recognize our colleague from Texas, Mr. Collins.

Mr. Zipp, refresh your memory back to the gulf coast in 1974, when it has been reported that DOE had three auditors who investigated into the daisy chain operation, but apparently their handiwork has somehow disappeared, never to be uncovered again. Are you familiar with that part of these curious turns of events?

Mr. ZIPP. Vaguely—in 1974 I was auditing other issue areas for GAO.

Mr. CONYERS. I don't mean you were there on the scene in 1974, but that you have investigated this incident on the gulf coast retroactively, which occurred about 1974.

Mr. ZIPP. Yes, sir, we examined the files from that case, and we did at one time have an example in our report that involved that particular case, but subsequently dropped it because of other examples that were better for crude oil resellers.

Mr. CONYERS. So this is just one of a number of instances that are similar?

Mr. ZIPP. Yes, sir, I think we are being very vague, and I am not sure that I am being responsive to you.

Mr. CONYERS. I cannot tell you any more than this. The case was covered up, so I wish I could be more specific. We have already had testimony earlier about a missing file that was hustled off into oblivion.

I do not have any more information. I am raising it seeking information.

Mr. ZIPP. I see. Let me respond that I am not sure we are talking about the same case.

Mr. CONYERS. I am not sure that we are either.

Mr. PEACH. I am not sure.

Mr. CONYERS. Do you remember in 1974 the situation involving daisy chains on the gulf coast, in which three DOE auditors' handiwork disappeared?

Mr. ZIPP. I have heard the allegation. Now I am familiar with what you are referring to. I have heard the allegation. I have not

seen those files, and I just have no comments really with regard to the merits of the case itself.

The fact the files are not available is interesting. There were a number of such files which, when I was in Dallas and Houston talking with DOE personnel, I did not have access to, or that could not be located.

One other thing I might mention is that we did have information obtained from other sources that should have been in the files in the Dallas regional office; but when our regional auditors, our regional staff, working on this specific assignment, were requested to go to those files and pick up copies of those documents, those documents were not in those files, and we did not pursue that issue. But I did obtain copies of documents from those files, but the originals were not there when we went back to pick them up.

Mr. CONYERS. The Chair recognizes the distinguished gentleman on the Subcommittee on Energy and Power, from Texas, Mr. Collins.

Mr. COLLINS. Thank you very much, Mr. Chairman. I appreciate the intensity and the comprehensive nature of this hearing. I am from Texas. I am from Dallas. Actually, I have never talked to any of the parties down there, so I don't know much about the background of this case except that I know it has gone on for several years.

Mr. Peach, you made a most interesting statement in here, in your prepared statement. If I can I just wanted to repeat this part, because I can see why this would make it very difficult for GAO or anyone else to come up with an answer.

You said you are "unable to effectively audit crude oil resellers for compliance with the pricing regulations because key issues involving the interpretation and the application of such regulations had not been resolved, despite repeated criticisms by GAO and others over the last several years."

You are speaking about the DOE, and that is on page 9 here of your statement, there. In other words, what you are saying basically is that for you to go in and provide an audit would be very difficult because the Energy Department has never specified and clearly defined what the regulations are.

Is that your understanding?

Mr. PEACH. Well, the regulations exist, but there have been over the years, in the area of the crude oil reseller area, some unresolved issues that have made it very difficult——

Mr. COLLINS. The interpretations?

Mr. PEACH. That is right. The biggest one probably involved was the whole question of determining the legal selling price of crude oil for resellers, because the resellers didn't have any base period. Everybody else was required to go back to a May 1973 base period, but most of the resellers came into existence after that time, so they had no base period, and without any information in terms of what their base period was, it is very hard to do a pricing audit, to decide the price at which they could legally sell their oil.

Now you could do a certification on it in some of these instances. You go in and audit to find out whether or not it had been certified properly as old oil or new oil. You could do that kind of audit, but

once you made that determination, the next step was deciding, what is the price this reseller could legally charge?

Clear regulations were not there to deal with that question, and their clarification was just finally produced within the last few months.

Mr. COLLINS. In terms of——

Mr. PEACH. Right, in terms of giving clarification to the field auditors so they could go in——

Mr. COLLINS. Just what did evolve? I don't know that either? What is the base price for the reseller?

Mr. ZIPP. It is relatively complex, but I will try to oversimplify it and make it easier to understand. What it is saying is that whatever you paid for oil in 1973, is compared to what you are paying today, and the difference is an increment which is added to the current cost, and that is what you can sell the oil for. It is the increased cost determination that was subject to interpretation.

Let me correct myself. The increment between the two costs is added to the selling price in 1973, and that gives you your current selling price.

Now the problem that existed was there was no base period. There was no 1973 cost for many of these companies. Consequently, they could not compare the growth in cost, or that increment between today's cost and what had been the cost in 1973. So what DOE must do is, through regulation, impute a base period cost and say that it should have cost so many dollars in 1973. It does cost so many dollars today, and we will add that cost to what you should have sold it for in 1973.

Mr. COLLINS. In the regulations as they stood at that time, these resellers—and I don't know any of them—most of them must have been from Houston. I really didn't hear of any from Dallas. I am sure I would have heard.

But these resellers, what they did, was it actually illegal or was the fact that the regulations were blank meant what they did was unethical?

Mr. PEACH. In some of the cases that have been referred to Justice, the implication of illegality is there because they certified the oil improperly. They took oil that was old oil under the regulation that should have been controlled at lower prices and sold it for the new oil price, which was much higher.

Mr. COLLINS. And they knew what they were doing?

Mr. PEACH. $6 a barrel and $13 a barrel.

Mr. ZIPP. Yes, sir. With regard to old versus new oil, they clearly would know what they were doing because the differential in price was substantial, double the price.

Mr. COLLINS. But now we have these regulations to where you would understand them or I could understand them.

Mr. ZIPP. No, sir.

Mr. COLLINS. They are still not clear?

Mr. ZIPP. Let me read to you what the DOE says. They said that—

DOE is aware that even with the adoption of the new rules for application after January 1, 1978, considerable confusion continues to exist as to the appropriate application of the rules of subpart (F), which applied before, to sales by crude oil resellers prior to January 1, 1978.

In order to provide appropriate guidance DOE will soon issue a further notice on this issue.

I have not seen any further notice or further interpretation for the public. I have seen some internally for the auditors, as to how to audit.

It is a very confusing set of regulations. There is no question about that. GAO has recommended a number of times that the ambiguity must be eliminated in order to make the regulations enforceable.

If I put myself in the position of a reseller, how would I comply, and I am a CPA, and I have to have some knowledge and skills in reading Government literature, these are very confusing, even to GAO.

We have differences of opinion as to how something should be interpreted, both in the interest of the Government and also how a reseller could see it. So there is room for interpretation, and there is a definite need for specific guidance.

Right or wrong is irrelevant; but there needs to be specific guidance as to how DOE wants these regulations to be implemented.

I point out one issue we raised here, the multiple inventory issue. They held a public hearing to determine whether a particular regulation should be made retroactive. They decided it should not be made retroactive. They told everyone in a public forum it should not be.

Two years later they issued an internal document that told the auditors to go out and audit using a retroactive determination of that regulation. This is inconsistent. It is just not fair to the person who is trying to comply with regulations in that he doesn't know which regulations are effective, and how he is going to be audited, or even how to price his product. It is frustrating.

Mr. COLLINS. I think you really have clarified the fact that it is very confusing. I can see the complications about any interpretation.

Let me go to one other thing now. We are talking about independent resellers. But the press called me this afternoon. They said they wanted to know what is happening to all the major oil companies. I just want to get myself straight on this.

We are not talking about any major oil companies; are we?

Mr. ZIPP. The crude oil resellers are involved with major oil companies to the extent they buy oil from their production facilities or sell oil to the refineries.

Mr. COLLINS. Have you made any allegations about any major oil companies?

Mr. ZIPP. No, sir.

Mr. COLLINS. You have not in any way?

Mr. ZIPP. No. We have not, no, sir.

Mr. CONYERS. But a lot of witnesses here have that preceded them.

Mr. COLLINS. They have?

Mr. CONYERS. Oh, yes.

Mr. COLLINS. Did they name any companies?

Mr. CONYERS. I am sorry to say there were companies named. You will have to read the record.

Mr. COLLINS. I will sure study that part. I sat in on 4 years of oversight hearings before this in our committee where we investigated. Half the time we were checking on oil companies, as to whether they had withheld gas from the market or tried to price oil or something, and I never found a case there where basically the major oil companies, I didn't see any cases.

I am going to be following this very, very carefully because of course we do have the eyes of the country on gasoline right now.

Mr. ZIPP. Mr. Collins, the two cases that we cite in our report as examples do have major oil companies involved with them, but we do not identify any of the companies by name.

Mr. COLLINS. In your particular audits, did you make any statements about them being involved?

Mr. ZIPP. No, sir. We did not name any companies. We named no companies.

Mr. PEACH. That particular review was in this case more concerned with the process that is being followed by the Department of Energy and the Department of Justice in carrying out their responsibilities, rather than dealing with the specific audits of companies and circumstances involving specific audits.

Mr. COLLINS. Were there any kickbacks that you ran into that you specified, where major oil companies or their officials received remuneration for setting up these reseller arrangements?

Mr. ZIPP. We are aware in one of the examples in our report of the details of that case which involved payments to a major oil company executive, but we did not identify——

Mr. COLLINS. That was a criminal case. Was that turned over to the Justice Department?

Mr. ZIPP. It was referred to the Justice Department, and I believe it has declined prosecution to the current date.

Mr. COLLINS. Do you know any facts on this case?

Mr. ZIPP. Yes, sir, I read the entire file.

Mr. PEACH. I think probably the best people to take that up, of course, are the Department of Justice, who make the decision.

Mr. COLLINS. That is right. Thank you.

Mr. CONYERS. Are there any conclusionary statements that you would care to make, gentlemen?

Mr. PEACH. No, Mr. Chairman. I think the questions that you have asked have comprehensively covered the issues which we raised in our report, and we will be glad to work with you in this followup effort in which you are interested.

Mr. CONYERS. Yes. Staff counsel for the Judiciary Crime Subcommittee had a question.

Mr. STOVALL. Thank you, Mr. Chairman.

The question of threshold of criminality has come out in different ways during your comments. Mr. Peach, could you or perhaps Mr. Zipp or others comment on what recommendations GAO might make as to the threshold of criminality at which the Department of Energy should then properly refer cases to the Department of Justice?

Mr. PEACH. Let me answer in a general way, and I will ask Mr. Zipp if he wants to add anything. I use the term, when they have credible evidence of criminal activity existing, in one of their investigations, and they decide to pursue it as a criminal matter in the

Department of Energy, they establish an investigative plan at that point in time for pursuing the investigation.

We see that as a point in time when they should have their first dialog with the Department of Justice. We will agree with them that there doesn't necessarily have to be any exact magic point when you would make a decision to refer a case.

If DOE is going to be pursuing it on a criminal basis, then we think they need to have in mind exactly what Justice wants, and feels they would need, and their views about the case.

By establishing this communication, they can also jointly work on making a decision as to when is the proper time for referral, based on their pursuit of that investigation. I think that is the kind of framework within which they need to work.

Mr. STOVALL. Mr. Zipp, did you have a comment?

Mr. ZIPP. Yes, I would like to elaborate a little bit on that. Again, it goes back to the written procedures. There must be something in writing that tells people what to do under certain conditions.

They can be general. If you look at the written words of what DOE is under currently, their role in regard to the special investigation cases is to determine whether or not a violation of the agency's regulations is willful. That is a criminal investigation in our opinion.

They further go on that they don't even make the decision to establish a special investigation until the region or the national office has decided that credible evidence exists, including circumstantial evidence, that an apparent willful violation of DOE regulations or Federal statutes has occurred or may occur.

What I am suggesting is this, that Justice and DOE get together and take these kinds of language and decide when Justice should be contacted. It should be I think at least at the point when somebody decides that there is credible evidence of a willful violation, that Justice should be contacted and their input provided into the investigative plan.

Mr. STOVALL. How do you respond to the Department of Justice's concern that they claim that there is a difficulty with parallel investigations going on, civil and criminal investigations?

Mr. ZIPP. Well, I can respond as a layman in that regard, because not being an attorney I cannot give you a specific legal analysis.

Mr. STOVALL. Could you give us something written, from your counsel, because we have a time problem.

Mr. BOLAND. Let me respond to that, if I may.

Mr. STOVALL. Could you give us a legal opinion?

Mr. BOLAND. I can't give you a legal opinion today. If you need that, I guess we could ask our General Counsel's office to do that. But I think many times supervision by Justice is confused with leadership; assuming a leadership role.

I think that is Justice's concern, that by merely discussing the cases at a very early date, which we suggest that appropriate date would be during the time the investigative plan is prepared, that that assumes a transfer of leadership.

We don't see that as necessary. Again, it is a statutory responsibility, as Justice has testified in the past, for the Justice Department to supervise such cases.

Mr. STOVALL. You don't agree with their comment that if they took the case they would control the investigator from the Department of Energy and they then, Justice, would be in control? You don't agree with that?

Mr. BOLAND. I see it as an avoidable problem. It is something that doesn't have to happen.

Mr. STOVALL. OK. Thank you very much.

Mr. CONYERS. Gentlemen, you have been very helpful. Your report is most welcome.

The Subcommittee on Energy and Power and the Subcommittee on Crime stand in adjournment until Monday, June 4, at 9:30 a.m. where they will reconvene at 2141 Rayburn Building.

The subcommittees are adjourned.

[The following letter with attachment was received for the record:]

MOBIL OIL CORP.,
New York, N.Y., June 7, 1979.

Hon. ALBERT GORE, Jr.,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN GORE: The Dallas Morning News of May 31 quotes you charging that Mobil participating in the scheme under which a reseller illegally switched old oil to new. We understand that the statement was made on May 30 at a joint hearing of The House Interstate & Foreign Commerce Subcommittee on Energy and Power and The House Judiciary Subcommittee on Crime. I can assure you that charge is untrue.

Mobil was among the first to call attention to the difference between old oil production as reported by producers and that run by refiners. Attached is a letter I sent to DOE's John O'Leary over two years ago, well before there was any public awareness of the problem. The entitlements cost of this old oil difference has added as much as three million dollars per month to Mobil's overall crude costs, and the public record fully reflects our efforts to put a stop to it.

It's also worth noting that there would be little incentive for Mobil to participate in any such scheme. Mobil is not a crude reseller, and as such under DOE price control regulations, we are not permitted to retain a trading profit. We exchange or trade crudes only to optimize our refinery supply (e.g., to obtain crude of a required quality or to avoid transportation bottlenecks). All savings and all cash differential payments (for quality, location, etc.) for these exchanges and trades are deducted from our allowable crude costs and effectively reduce the prices we may charge for gasoline and other controlled products.

I would like to rebut any specific allegations, but no one inside the government or out has ever informed us of anything which might be the basis for such a charge. Our accounting unit maintains an accurate, auditable recrod of the entitlement status of all crudes in our system, and we issue clear, unambiguous documentation of the entitlement status of all crudes traded to others. We have recently again reviewed these records. That review produced no evidence that Mobil had been a party to any scheme to alter illegally the entitlement status of any crude.

Ouite possibly you were misquoted or have been misinformed relative to this issue.

Copies of this letter are being sent to the subcommittees referred to above for inclusion in the record.

Very truly yours,

B. H. TEMPLETON,
Vice President, Supply, Distribution and Traffic,
U.S. Marketing and Refining Division.

MOBIL OIL CORP.,
New York, N.Y., April 15, 1977.

J. F. O'LEARY,
Administrator, Federal Energy Administration,
Washington, D.C.

DEAR MR. O'LEARY: We have for some time been concerned over the difference between the industry percentage of old oil in domestic production as reported by the first purchasers and the percentage as reported by refiners under the Entitlements Program. I decided to communicate our concern to you when we saw that the data for January showed one of the largest differences on record.

A review of the data for the twelve months starting February, 1976, shows that while the total volumes of crude oil reported under each system have compared very closely, the perecentage of old oil reported by refiners for entitlements purposes has averaged 53.2, while that reported by the first purchases from the producers has averaged 54.2 percent.

Mobil has discussed this difference with several representatives of the Office of Regulatory Programs in an effort to understand this discrepancy. No explanation has been found. It therefore appears to us that somewhere between the producers and the refiners there are instances where old oil is being converted to the upper tier or stripper well categories.

Assuming such conversion is solely to upper tier crude, this difference of 1% represents an overall increase in industry crude costs to refiners of about $0.5 million per day, or $190 million per year. Again, assuming that there is no mathematical or other explanation for this difference the mechanics of the Entitlements Program are such that the industry's crude costs are being increased. The end result is an apparent windfall to a few individual firms at the expense of others.

I believe this situation deserves a thorough investigation and would appreciate your thoughts.

Very truly yours,

B. H. TEMPLETON,
Vice President, Supply,
Distribution and Traffic,
U.S. Marketing and Refining Division.

[Whereupon, at 5:45 p.m. the subcommittees adjourned, to reconvene at 9:30 a.m., Monday, June 4, 1979.]

WHITE-COLLAR CRIME IN THE OIL INDUSTRY

MONDAY, JUNE 4, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
AND SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittees met at 9:30 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John D. Dingell, chairman of the Subcommittee on Energy and Power, and Hon. John Conyers, Jr., chairman of the Subcommittee on Crime, presiding.

Mr. CONYERS. The Subcomittee on Crime of the House Committee on the Judiciary and the Subcommittee on Energy and Power of the Interstate and Foreign Commerce Committee will come to order.

Good morning. Today we continue the hearings on white-collar crime in the oil industry, or crude oil resellers and the Department of Energy and the Department of Justice Enforcement program. Testimony at our first hearing and other investigations by the subcommittees suggests that only token enforcement activity by the Federal Government has been employed up until now.

Persons engaging in illegal practices boast openly of the huge profits that they have pulled in, and dismissed the rare enforcement sanctions imposed against them as insignificant costs of doing business. The Department of Energy and its predecessor organizations have apparently lacked the ability to use enforcement mechanisms in place for effective prosecution against these practices.

The Department of Justice, which has reponsibility for bringing prosecution of criminal cases, has claimed apparently that it is only responsible for prosecuting cases which DOE has packaged and delivered to it. Very few of these have apparently arrived at the Department of Justice.

The role of the Department of Justice and its constituent agencies, including the Federal Bureau of Investigation, is the focus of today's hearing. Last week's hearings provided testimony from field enforcement personnel from both DOE and the Department of Justice as well as the Government Accounting Office, which did a study of enforcement efforts for the Congress. These witnesses painted a picture of a regulatory agency which has never geared up effectively to bring enforcement action against these illegal practices.

As for the Department of Justice, despite mounting evidence of massive fraud and the unwillingness or inability of the Department of Energy to deal with it, the Justice Department has apparently

done little to alter its investigation and prosecution procedures. The result of this failure of systems within Justice and between DOE is that only a handful of prosecutions has been brought against fraudulent practices, which are costing the American public billions of dollars.

With that opening, I will now recognize the distinguished chairman of the Subcommittee on Energy and Power of the Interstate and Foreign Commerce Committee, my colleague from Michigan, Hon. John D. Dingell, whose energy and efforts in this area have caused these hearings to be held in the first instance, and who has been so kind to join with this subcommittee in moving forward to these hearings. With great pleasure I recognize Chairman Dingell.

Mr. DINGELL. Mr. Chairman, I thank you very much for those gracious comments, and I am indeed pleased that you and I are able to cooperate on these matters relating to oil pricing. I commend you and your distinguished subcommittee and your able staff for your assistance and cooperation in this very important matter. It is a privilege to work with you.

Today we continue hearings into the failure of both the Department of Energy and Department of Justice to prosecute criminal activity in the oil industry. At the subcommittees' hearings last week we heard a sorry tale of Government officials failing—either willfully or otherwise—to perform their assigned responsibilities.

It is incredible that since the oil embargo of 1973–74 there has been only one, and I repeat that, only one completed prosecution of an oil case. I should note that that prosecution is more the result of a dedicated prosecutor than the system, or leadership from the top.

Alan Zipp, a GAO investigator, testified that he was sufficiently disturbed about the laxity of certain Department of Energy attorneys in pursuing the crude oil reseller frauds that he discussed some of his evidence with the FBI. The FBI response was that, "There is no law against ignorance and dereliction of duty." This should give very small comfort to the taxpayer. Of course, unless a thorough investigation is conducted, we will not know whether these classic failures to enforce the criminal laws on the oil industry were due to ignorance, overwork, or corruption. Tony Canales, the U.S. attorney in Houston, told the subcommittees that he had thoroughly investigated all criminal allegations against Department of Energy officials without finding one iota of evidence that there have been payoffs for sloppy audits. Canales failed to note that the Department of Energy had an auditor who was recently indicted in Texas for allegedly soliciting a bribe from a refiner.

The subcommittee has serious questions about the thorough investigation that has been conducted by the Department of Justice of not only Department of Energy officials but a number of widespread frauds in the oil industry. In one case the FBI completed an investigation of an alleged bribe attempt of an FBI official—but failed to interview the individual who apparently ordered the bribe. The criminal division of the Department of Justice had to send the FBI back to the field to conduct these basic interviews.

Three years ago the subcommittee raised serious questions about the top Federal energy official in the Atlanta regional office who was provided a free love nest, a trip to a Florida beach house, and other gratuities by a major oil distributor who was subject to his

regulatory oversight. This distributor and others allegedly received preferential treatment from the Federal official. A witness told the subcommittees last week that while discussing the case with a Justice Department attorney he discovered that the attorney was relying on the wrong file to pursue the case. For 3 years the case has been under investigation by the Department of Justice until 3 months ago when we were told it was to be closed without prosecution—despite President Carter's new emphasis on prosecuting white-collar crimes by Government officials. When the subcommittee requested the documents relating to this case, the case was mysteriously reopened because Justice miraculously found new evidence after 3 years.

In 1978 a top Department of Energy enforcement official in the Southwest was under investigation by the FBI for bribery. Although the FBI claims they completed the investigation they have refused to provide information to either the Inspector General at the Department of Energy so that internal mechanisms in that agency could rectify the abuse, or to the Subcommittee on Energy and Power which requested this information as a part of its ongoing inquiries into these matters.

The subcommittee reported an allegation of a company source that a political slush fund was developed by the resellers involved in the frauds in Houston to take care of DOE. The U.S. attorney requested that the staff not pursue the allegation. The FBI would investigate. If we are not satisfied it is being pushed, the staff will be directed to follow up on their leads.

Although Justice was aware of the criminal daisy chain frauds from press accounts as early as December 1974, the Department sat rather tranquilly on the sidelines while the Department of Energy floundered. It took the Department of Energy 3 years to refer their first criminal daisy chain matter. According to another witness last week the Justice Department failed to pursue a criminal case that involved a Gulf Oil vice president accepting a $150,000 consulting contract as an apparent bribe.

It would appear there is a strong possibility that the statute of limitations has been permitted to expire.

It was also incredible to hear from the prosecutors about the way they found out about these massive frauds. Marvin Rudnick, the successful prosecutor of the Florida Power daisy chain, told the subcommittees that he discovered the case when a consumer came in off the street one day with a Jack Anderson article based on information released by the subcommittee.

Tony Canales, the U.S. attorney in Houston, who has received indictments of numerous companies and individuals in the Houston reseller frauds, told the subcommittees he had seen a TV report on the *Florida Power* case which led him to contact a friend in the Department of Energy to shake loose some similar cases.

The only case brought against a major oil company, Conoco, resulted from Conoco turning themselves in. Perhaps that is some new hope for the Federal justice system. The Department of Justice almost bungled that case by allowing it to languish in Washington for 9 months while the statute of limitations was running out.

We have to ask ourselves, was the program designed to fail, or were the officers who were charged with carrying it out designed to fail.

Thank you, Mr. Chairman.

Mr. CONYERS. In keeping with the previous practice of these subcommittees hearing jointly, we will continue to swear in the witnesses, and our witnesses this morning are Hon. John C. Keeney, Deputy Assistant Attorney General, accompanied by Mr. Richard M. Fishkin, attorney for the Fraud Section, Criminal Division; Mr. Francis M. Mullen, Jr., Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation; Mr. Joseph E. Henehan, Section Chief, White-Collar Crime Section, Criminal Investigative Division, FBI; Mr. Dana E. Caro, Chief Inspector, Planning and Inspection Division, Federal Bureau of Investigation.

Welcome, gentlemen, to the hearing.

TESTIMONY OF HON. JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY RICHARD M. FISHKIN, ATTORNEY, FRAUD SECTION, CRIMINAL DIVISION; FRANCIS M. MULLEN, JR., DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION; FEDERAL BUREAU OF INVESTIGATION; JOSEPH E. HENEHAN, SECTION CHIEF, WHITE-COLLAR CRIME SECTION, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION; AND DANA E. CARO, CHIEF INSPECTOR, PLANNING AND INSPECTION DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. CONYERS. Do any of you have any objection to being sworn? If not, stand and raise your right hand. Do you solemnly swear the testimony you are about to give to these two subcommittees will be the truth, the whole truth, and nothing but the truth, so you help you God?

[Chorus of "I do."]

Mr. CONYERS. Thank you, and be seated.

My cochairman has reminded me that I should advise you routinely that copies of the rules of these subcommittees are available for your inspection, if for any reason you should choose to want to see them. Do you have any desire to have this meeting or hearing closed?

Mr. KEENEY. No, sir, not on both scores. We see no need to see the rules, and we see no need to hold the closed hearings, Mr. Chairman.

Mr. CONYERS. Thank you very much.

Mr. KEENEY. In that connection, Mr. Chairman, with respect to closed hearings, I would like to commend Chairman Conyers, Chairman Dingell, and all the members of the committee and staff for the sensitivity which they have shown during the course of these hearings to the fact that we have ongoing criminal investigations and proceedings, and the appropriate handling of the question in order not to interfere with those investigations and criminal trials.

Mr. CONYERS. Thank you. We have the prepared statements of the Deputy Assistant Attorney General and the Deputy Assistant

Director of the Criminal Investigative Division. Without objection, they will be incorporated into these records in full, and we will allow you to begin your testimony beginning with Hon. John C. Keeney.

TESTIMONY OF HON. JOHN C. KEENEY

Mr. KEENEY. Mr. Chairman, I would like to introduce into the record, as you have, my statement, and then I would like to hit some of the highlights of the statement, if I may.

I welcome the opportunity to appear before both subcommittees and discuss the two major areas, our working relationship with the Department of Energy, our enforcement program, and the status of energy prosecutions as part of our top priority white-collar crime enforcement program.

In the statement we set forth the history of the Department's relationship to the energy cases beginning in December 1977, going over to the early spring of 1978 when the Criminal Division decided that all Department of Energy criminal referrals should be channeled to the Fraud Section in our Criminal Division for evaluation and referral to an appropriate U.S. attorney.

This policy determination was based upon several considerations. First, assuring a uniform prosecutive policy in a regulated area of some complexity. Two, achieving maximum enforcement impact by bringing the prosecution in the most appropriate judicial district. Three, avoiding duplication of effort and enabling the Department to make the most judicious use of its resources, both in numbers and in expertise.

In order to assure that the Department has nationally a uniform prosecutive policy regarding energy matters, and common understanding of the applicability of pertinent regulatory and statutory provisions, the Deputy Attorney General directed that all prosecutions and declinations of prosecution be supported by memoranda and concurred in by the Assistant Attorney General in the Criminal Division.

Proposed indictments and plea-bargaining arrangements are submitted to the Criminal Division for approval. All referrals to U.S. attorneys are accompanied by a letter of transmittal containing these guidelines.

Mr. Chairman, we have submitted to the committee exhibits reflecting these policy statements, and a sample letter which we send to U.S. attorneys with respect to each one of these referrals.

Now beyond that, with the increase of DOE criminal referrals, in September 1978 we created an energy unit in the Fraud Section to maintain liaison with DOE at the national level and coordinate the handling of criminal referrals. The U.S. attorneys in this energy unit review all DOE referrals and determine whether or not the matter should be referred, and to which U.S. attorneys. These attorneys coordinate with and advise DOE and advise U.S. attorneys' offices on matters relating to proposed indictments, motion practice, and trial tactics.

In many instances the U.S. attorneys themselves are handling energy-related matters before the Federal grand juries at the trial stage.

Currently we have nine attorneys in the Fraud Section assigned to the energy unit. Seven of these are based in Washington. One is based in Houston, Tex., with Mr. Canales, and another is assigned to Tampa, Fla. The latter attorney services are utilized in the middle district of Florida as well as other parts of the South as the needs arise, and unit attorneys are presently directing investigations in a number of jurisdictions throughout the country.

In addition, the other resources available to us, we have the staffs of U.S. attorneys' offices across the country available where appropriate for handling energy cases, and a number are presently doing so. In addition to Mr. Canales in Houston and Mr. Rudnick in Florida, we have U.S. attorneys' offices involved in Denver, Colo., Oklahoma City, Okla.; Los Angeles, Calif.; and Brooklyn, N.Y. There are approximately 10 assistant U.S. attorneys working on energy matters related to petroleum.

In addition—Mr. Mullen will elaborate on this—the investigative resources of the Federal Bureau of Investigation are available and are being widely used. For instance, the Bureau has assigned 11 agents and 2 accounting technicians to the support of the U.S. attorney in Houston. The agent personnel include two certified public accountants. The remaining agents all have accounting backgrounds. In addition, DOE makes its audit personnel available to the prosecutors after referral.

There are presently 15 DOE auditors assigned to the active support of U.S. attorneys.

One of the critical items, Mr. Chairman, for discussion here is whether or not we have adequate resources available in the Criminal Division for assignment to the energy program. If the energy situation remains critical over a protracted period, an increase in fraudulent practices can be anticipated. This would necessitate the assignment to energy matters of personnel from other priority programs, but as the situation presently exists, we feel the resources the Criminal Division has assigned to energy matters is adequate to handle the problem.

At the present time there are 39 active cases being handled by the Department of Justice, either through energy unit attorneys, U.S. attorneys or jointly, and in this connection, we have offered to the committee, and I will offer it as an exhibit, a list of the 45 cases that have come through the Fraud Section from DOE, 39 of which are still active in one form or another.

Mr. CONYERS. Without objection, we will accept that and incorporate it into the record.

Mr. KENNEY. Thank you, Mr. Chairman.

Based upon our experience to date, these matters can result in multidefendant indictments involving individuals and companies. I offer this information to place in proper perspective the number of cases being handled. In the majority of instances we have been proceeding toward felony prosecutions utilizing the title 18 statutes, 18 U.S.C. 1001, false statements, conspiracy to defraud the United States under 18 U.S.C. 371 and schemes to defraud involving use of the mails and wires, in violation of 18 U.S.C. 1341 and 1343.

In a very few instances, and I emphasize this, very few instances, referrals have been made for pure regulatory violation of DOE

pricing regulations. These are misdemeanors. These primarily have involved gasoline stations.

The kind of cases being handled include the certification, manipulation of crude oil, allocation fraud, daisy chain, price manipulation, product diversion, and a variety of other standard frauds. In addition, we have received two natural gas referrals from the Federal Energy Regulatory Commission.

I have set forth in my statement, Mr. Chairman, and I will not repeat it, the statutory and constitutional basis for the referral requirement that these matters be brought to the attention of the Criminal Division or the Department of Justice when there are indications of criminality.

I would like to mention here our relationship with DOE. Unlike more common crimes, regulated energy matters frequently require the expenditure of a considerable amount of investigative time before a judgment can be made that a matter is criminal in nature. The complexity of the regulated industry and the ingeniousness of the schemes require that investigators have substantial technical knowledge.

Numerous records and documents have to be examined and many interviews conducted before significant indications of fraud are uncovered. Suspicions, hunches, feelings and gut reactions are not evidence of fraud and criminality. What we look for and what we expect we will receive from DOE is a referral or a contact with us when they find evidence of fraud.

Now in December 1977 a practice was instituted whereby DOE confers with us about matters having criminal potential prior to the formal criminal referral. This procedure alerts us to potential criminal cases, and enables us to advise DOE whether the matter warrants referral for criminal consideration. Moreover, this informal liaison can alert us to matters having criminal potential that might have statute of limitations problems, and as Chairman Dingell has indicated, that has been a problem in some situations in the past.

When advised of a case with a statute of limitations problem, even though more investigation might be required, we can request its referral to the Department of Justice for handling on an expedited basis with the assistance of the Federal Bureau of Investigation and the grand jury.

During the informal DOE-DOJ communication before referral to a specific U.S. attorney for possible criminal prosecution, there is no informal communication between DOE regional offices and local U.S. attorneys. That is at our specific request. As indicated earlier, any of these energy-related matters have nationwide impact and overlap more than one judicial district. We believe that the public interest would best be served by having the Criminal Division make the decision as to the place for prosecution rather than having it done by a DOE regional office or a local U.S. attorney.

We believe that we are in the most advantageous position to determine the most suitable form for prosecution and assess the availability of our best resources. Cases of this complexity and magnitude strain the resources of our smaller U.S. attorneys' offices.

After a matter is referred to the U.S. attorney or is retained by the energy unit for prosecution, communication with DOE regional offices is encouraged, and their assistance is obtained.

Our personnel have worked with DOE on the type of investigative report which we desire. This collaborative effort is fruitful and we are presently receiving reports of investigation of good quality.

Problems relating to the timeliness of DOE criminal referrals that existed prior to 1977 have, we believe, been corrected. We are presently receiving referrals at regular intervals and they are being evaluated promptly and referred expeditiously where appropriate for prosecutive action.

In view of our existing relationship with DOE with regard to criminal referrals, we see no need for a formal instrument establishing procedures for such a referral. We do have a memorandum and exchange of correspondence with DOE with respect to their handling of civil matters after the referral of a matter for criminal consideration, and I believe we have offered that to the staff, and I would like to offer that exchange of correspondence for the record if I may, Mr. Chairman.

Mr. CONYERS. Yes, we are very happy to receive that into the record. I would like staff to make sure a copy of that is replicated for all of the members of the subcommittee, please.

Mr. KEENEY. Mr. Chairman, that concludes my preliminary remarks, and I would be very pleased to attempt to answer any of the questions which either the chairman or members of the committee might have.

[Testimony resumes on p. 147.]

[Mr. Keeney's prepared statement and attachments follow:]

STATEMENT OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

INTRODUCTION

I welcome the opportunity to appear before both subcommittees and discuss the Department of Justice's enforcement program in the energy field, our working relationship with the Department of Energy and the status of energy prosecutions as a part of our top-priority white collar enforcement program.

ORIGIN OF THE DEPARTMENT'S PROGRAM

In December, 1977, the Criminal Division concluded that special handling would be required for energy related matters referred by the Department of Energy (DOE) for criminal consideration in view of indications that the number of referrals would increase substantially as well as because of the complexity of the matters themselves. Up to that time, energy related criminal referrals, like many other criminal referrals in the Fraud Section, were assigned based upon attorney availability, experience and the complexity of the matter.

Initially, in order to accommodate the anticipated increase in DOE referrals, a senior Fraud Section attorney was designated to receive and evaluate these matters and refer those with prosecutive potential to an appropriate United States Attorney. In addition, this attorney was responsible for maintaining liaison with DOE in order to be apprized of matters being developed for criminal referral as well as to advise DOE on the investigation and preparation of matters for criminal referral.

At that time, DOE criminal referrals were being routed to the United States Attorneys both directly by DOE and through our Fraud Section.

CENTRALIZATION OF THE EVALUATION AND REFERRAL FUNCTION

By the early Spring of 1978, the Criminal Division decided that all DOE criminal referrals should be channeled to the Fraud Section for evaluation and referral to an appropriate United States Attorney. This policy determination was based upon

several considerations: (1) Assuring a uniform prosecutive policy in a regulated area of some complexity; (2) achieving maximum enforcement impact by bringing the prosecution in the most appropriate judicial district; (3) avoiding duplication of effort and enabling the Department to make the most judicious use of its resources, both in numbers and in expertise.

In order to assure that the Department has nationally a uniform prosecutive policy regarding energy matters and common understanding of the applicability of pertinent regulatory and statutory provisions, the Deputy Attorney General has directed that all prosecutions and declinations of prosecution be supported by memoranda and concurred in by the Assistant Attorney General in the Criminal Division. Proposed indictments and plea bargain arrangements are submitted to the Criminal Division for approval. All referrals to United States Attorneys are accompanied by a letter of transmittal containing these guidelines.

ESTABLISHMENT OF AN ENERGY UNIT IN THE CRIMINAL DIVISION

In September, 1978, with the increase of DOE criminal referrals, an Energy Unit was established in the Fraud Section to maintain liaison with DOE at the national level and coordinate the handling of criminal referrals. The unit attorneys review all DOE referrals and determine whether the matter should be referred and to which United States Attorney. Unit attorneys coordinate with and advise DOE and advise U.S. Attorneys' offices on matters relating to proposed indictments, motion practice and trial tactics. In many instances, Unit attorneys are themselves handling energy related matters before federal grand juries and at the trial stage.

PRESENT COMPOSITION OF THE ENERGY UNIT

There are currently nine attorneys in the Fraud Section assigned to the Energy Unit. Seven of these are based in Washington, one is based in Houston, Texas, and another is assigned to Tampa, Florida. His services are utilized in the Middle District of Florida as well as other parts of the South as the need arises. Unit attorneys are presently directing investigations in Atlanta, Georgia; Pittsburgh, Pennsylvania; West Palm Beach, Florida; Chicago, Illinois; Wichita, Kansas, Oklahoma City, Oklahoma and New Orleans, Louisiana. In addition they are working jointly with United States Attorneys' offices in a variety of other jurisdictions.

OTHER DEPARTMENT RESOURCES

The staffs of U.S. Attorneys' offices across the country, where appropriate, are available for handling energy cases and a number are presently doing so, including: Houston, Texas; Tampa, Florida; Denver, Colorado; Oklahoma City, Oklahoma; Los Angeles, California; Brooklyn, New York. There are presently approximately 10 Assistant United States Attorneys working on energy matters related to petroleum. In addition, the investigative resources of the Federal Bureau of Investigation are also available and are being used. The Bureau has assigned 11 agents and two accounting technicians to the support of the U.S. Attorney in Houston, Texas. The agent personnel include two certified public accountants. The remaining agents all have accounting backgrounds. Moreover, DOE makes its audit personnel available to the prosecutors after referral. There are 15 DOE auditors assigned to the active support of U.S. Attorneys.

For the immediate present, the Department appears to have adequate resources available for assignment to this prosecutive program based upon the present rate of criminal referrals from DOE. However, if the energy situation remains critical over a protracted period, an increase in fraudulent practices can be anticipated. This would necessitate the assignment to energy matters of personnel from other priority programs.

NUMBER AND TYPE OF CASES HANDLED

At the present time, there are 39 active cases being handled by the Department of Justice either through Energy Unit attorneys, U.S. Attorneys' offices, or jointly. Approximately 45 criminal referrals have been processed since January, 1978. Prosecution was declined in six as not warranting criminal action. Included in these were some gasoline retail outlets involving individual proprietorships. Based upon our experience to date, these matters can result in multidefendant indictments involving individuals and companies. I offer this information to place in proper perspective the number of cases being handled. In the majority of instances we have been proceeding toward felony prosecutions utilizing the provisions of Title 18 of the United States Code (false statements, 18 U.S.C. 1001; conspiracy to defraud the U.S., 18 U.S.C. 371 and schemes to defraud involving the use of the mails and wires, 18

U.S.C. 1341 and 1343). In a very few instances referrals have been made for pure regulatory violations of DOE pricing regulations constituting misdemeanors. These have involved gasoline stations.

These cases being handled include the certification manipulation of crude oil, allocation frauds, "daisy chains", price manipulation, product diversion and a variety of other standard frauds. In addition, we have received two natural gas referrals from the Federal Energy Regulatory Commission.

THE CONDUCT OF CRIMINAL PROCEEDINGS

Under the authority of Art II, Section 2, Congress has vested in the Attorney General the power to conduct the criminal litigation of the United States Government. See Title 28 United States Code, Section 516. It has also vested in him the power to appoint subordinate officers to assist him in the discharge of his duties. See Title 28 United States Code, Section 509, 510, 515, 533. Thus under Section 515(a), he may direct "any other officer of the Department of Justice, or any attorney specially appointed by the Attorney General under law . . . when specifically directed by the Attorney General" to "conduct any kind of legal proceedings . . . including grand jury proceedings." Under the Attorney General's supervision, the United States Attorneys, appointees of the President, have the duty to prosecute all offenses against the United States within their districts. 28 U.S.C. Section 547.

If there is reason to suppose that acts coming to the attention of another Department are criminal in nature, it is the duty of that Department to report these acts to the Department of Justice. It then becomes the duty of the Department of Justice to consider whether or not the matter should be brought to the attention of the court. 21 Opinions of the Attorneys General 134.

DOJ RELATIONSHIPS WITH DOE IN HANDLING CRIMINAL CASES

Unlike more common crimes, regulated energy matters frequently require the expenditure of a considerable amount of investigative time before a judgment can be made that a matter is criminal in nature. The complexity of the regulated industry and the ingeniousness of the schemes require that the investigators have substantial technical knowledge. Numerous records and documents have to be examinined and many interviews conducted before significant indications of fraud are uncovered.

In December, 1977, a practice was instituted whereby DOE confers with us about matters having criminal potential prior to "formal" criminal referral. This procedure alerts us to potential criminal cases and enables us to advise DOE whether the matter warrants referral for criminal consideration. Moreover, this informal liaison can alert us to matters having criminal potential that might have Statute of Limitations problems. When advised of such a case, even though more investigation might be required, we can request its referral to DOJ for handling on an expedited basis with the assistance of the Federal Bureau of Investigation and the grand jury.

During the informal DOE–DOJ communication and before referral to a specific U.S. Attorney for possible criminal prosecution, there is no informal communication between DOE regional offices and local U.S. Attorneys. As indicated earlier, many of these energy related matters have nationwide impact and overlap more than one judicial district. We believe that the public interest would best be served by having the Criminal Division make the decision as to the place for prosecution rather than a DOE regional office or local U.S. Attorney. This avoids so-called forum shopping of the case. We have had unfortunate instances of this conduct with other agencies. We believe that we are in the most advantageous position to determine the most suitable forum for prosecution and assess the availability of our best resources. Cases of this complexity and magnitude strain the resources of our smaller U.S. Attorneys' offices. After a matter is referred to a U.S. Attorney or is retained by the Energy Unit for prosecution, communication with DOE regional offices is encouraged and their assistance is obtained.

DOJ personnel have worked with DOE representatives on the type of investigative report desired. This collaboration was fruitful and we are presently receiving reports of investigation of good quality.

Problems relating to the timeliness of DOE criminal referrals that existed prior to 1977 have been corrected. We are presently receiving referrals at regular intervals and they are being evaluated promptly and referred expeditiously, where appropriate, for prosecutive action. In view of our existing relationship with DOE with regard to criminal referrals, we see no need for a formal instrument establishing procedures for such referrals.

That concludes my statement. I will be pleased to answer any questions that the members of the subcommittee may have.

DEPARTMENT OF JUSTICE,
Washington, D.C., November 2, 1978.

Mr. LYNN R. COLEMAN,
General Counsel,
Department of Energy, Washington, D.C.

DEAR MR. COLEMAN: For the past several weeks representatives of our respective agencies have been reviewing our current criminal enforcement effort as it relates to Department of Energy matters to determine its sufficiency to meet existing needs. This review was essentially prompted by a recent dramatic increase in the number and complexity of the referrals being made to us by your Department as well as the need to adopt a uniform prosecution posture with regard to these matters. The joint review established two principal areas that have to be addressed: mustering resources to adequately investigate and prosecute referrals and establishing an effective mechanism for agency coordination and the establishment of nationwide prosecutive standards in energy related criminal matters.

At the present time the resource problem is particularly acute and must be addressed on a priority basis by both agencies. As you know most of the outstanding energy related matters are currently clustered in two judicial districts; the Southern District of Texas (Houston) and the Middle District of Florida (Tampa). We have discused the situation with the United States Attorneys in both districts and we have decided to create within their respective offices specialized units to exclusively focus on energy matters. These units will be under the day to day supervision of the United States Attorneys and will each be composed of two full time Assistant United States Attorneys and two Criminal Division attorneys. Based on current assessments the Federal Bureau of Investigation will be asked to assign eight full time agents to the Unit in Houston and four agents to the Unit in Tampa. Both units will require DOE audit support and our current estimates are that Houston will require twenty-five auditors while Tampa will need eight. Needless to say, the resource needs may change from time to time as the cases develop and we will have to continuously review the situation as the cases move forward. Moreover, with respect to cases in other districts we intend to address them on a case by case basis until such time as the volume of work suggests that we should also create specialized units in those districts.

We recognize that these units alone cannot provide a reliable mechanism for national coordination of these cases. To address this problem and to provide a national repository of expertise in this complex area as well as a source of supplemental personnel for other United States Attorneys who are handling these matters, we are in the process of establishing within the Fraud Section of the Criminal Division an energy unit. This unit will receive referrals from your agency, initially review them and forward them to the appropriate United States Attorney for development. The Criminal Division Unit will maintain effective liaison with all United States Attorneys handling such cases and keep the Department of Energy apprised of the status of the cases consistent with normal disclosure restrictions. The unit will strive to develop a cadre of prosecutors familiar with energy matters and the operative statutes and regulations, who will be available to assist United States Attorneys as needed. The Unit will also maintain effective liaison with the Civil Division of this Department to ensure that the civil aspects of these matters are being adequately addressed.

To further ensure uniformity in handling DOE cases, and until such time as it is no longer required, I intend to instruct all United States Attorneys to provide the Assistant Attorney General in charge of the Criminal Division with a prosecutive memorandum and obtain his concurrence before taking any action, including plea dispositions, on Department of Energy matters. This will provide a mechanism for maintaining enforcement consistency throughout the country.

I am confident that in proceeding in the fashion described above we can affectively meet the current enforcement challenge that confronts the country in the energy field.

Sincerely,

BENJAMIN R. CIVILETTI,
Deputy Attorney General.

	Type of Allegation	District	Violations	Chronology of Actions and Status
1.	Product reseller "Daisy Chain"	M.D. Florida	18 U.S.C. 1341	11/77 Referral to Department of Justice Referral to United States Attorney 5 convictions 1 trial to come U.S.A. & Energy Unit
2.	False Documents to increase allocations - product distributors	S.D. Florida	18 U.S.C. 1001 18 U.S.C. 1341	(Early referral : Grand Jury turned up additional charges 12/78 Grand Jury referral to Energy unit
3.	False Certification of Field to gain stripper status major oil company involvement	M.D. California	18 U.S.C. 1341 18 U.S.C. 1001	11/78 Referral to Department of Justice 12/78 Referral to United States Attorney U.S.A. under investigation
4.	False filing to increase allocation by product wholesale	N.D. California	18 U.S.C. 1001	11/78 Referral to Department of Justice 2/79 Referral to United States Attorney - Handling
5.	Falsification of documents by service station - price violation	N.D. California	18 U.S.C. 1001	9/78 Declined
6.	Falsification for allocation - wholesaler - product reseller	Colorado	18 U.S.C. 1001	2/79 Referral to United States Attorney 5/79 Indictment
7.	Falsification of price information pricing violation - reseller, retailer	Colorado	18 U.S.C. 1001	8/78 Referral to Department of Justice 10/78 Referral to United States Attorney
8.	Product reseller "Daisy Chain" to Utility	N.D. Georgia	18 U.S.C. 1001 18 U.S.C. 1341	12/78 Energy Unit - Grand Jury

	Type of Allegation	District	Possible Violations	Chronology of Actions and Status
9.	False filings - subversion of program improper allocation of product (Companion case referred only being investigated with this case with aid of other DOJ section)	N.D. Georgia	18 U.S.C. 371 18 U.S.C. 1001 18 U.S.C. 1951	12/78 Energy Unit - Grand Jury
10.	Daisy Chain by product reseller to utility	N.D. Illinois	18 U.S.C. 1001 18 U.S.C. 1341	12/78 Referral to Department of Justice 1/79 Referral to United States Attorney United States Attorney & Energy Unit
11.	False cert. by crude producer to gain stripper status	Kansas	18 U.S.C. 1001 18 U.S.C. 1341	11/78 Referral to Department of Justice 12/78 Referral to United States Attorney Energy Unit - Grand Jury
12.	product wholesalers "Daisy Chain"	E.D. New York	18 U.S.C. 1001	10/78 Referral to Department of Justice 10/78 Referral to United States Attorney U.S.A. - 2 convictions Grand Jury - continuing
13.	Crude oil reseller certification falsification - old - new - stripper flip	W.D. Oklahoma	18 U.S.C. 1001 18 U.S.C. 1341	11/78 Referral to United States Attorney Energy Unit & Grand Jury
14.	Crude producer - falsification of old as stripper	W.D. Oklahoma	18 U.S.C. 1001 18 U.S.C. 1341	8/78 Direct from P.O. U.S.A. & Energy Unit investigation
15.	product reseller falsification of allocation documents	W.D. Oklahoma	18 U.S.C. 1001	10/78 Referral to United States Attorney & Energy Unit 5/79 Indicted
16.	Crude oil reseller certification falsification - related to above case	W.D. Oklahoma	18 U.S.C. 1001 18 U.S.C. 1341	United States Attorney - Energy Unit - Indictment returned - other parts still in G.J.

	Type of Allegation	District	Possible Violations	Chronology of Actions and Status
17.	Product reseller price violation	W.D. Pennsylvania	18 U.S.C. 1001	11/78 Energy Unit - Grand Jury
18.	Product refiner & reseller Daisy Chain to utility	W.D. Pennsylvania	18 U.S.C. 1001	12/78 Energy Unit - Grand Jury
19.	Refiner & reseller price violations Daisy Chain - kickbacks	W.D. Oklahoma	18 U.S.C. 1001 18 U.S.C. 1341	2/79 Energy Unit & United States Attorney - Grand Jury
20.	Crude reseller certification manipulation	S.D. Texas	18 U.S.C. 1001 18 U.S.C. 1341	7/78 Energy Unit & United States Attorney Grand Jury
21.	Crude producer - refiner Daisy Chain	S.D. Texas	18 U.S.C. 1001 18 U.S.C. 1341	5/78 Energy Unit - Grand Jury
22.	Crude oil reseller old oil - new oil certification manipulation	S.D. Texas	18 U.S.C. 1001 18 U.S.C. 1341	6/78 U.S.A. & Energy Unit - indictment
23.	Retailer false documents - price violations	W.D. Virginia	18 U.S.C. 1001	Declined - convicted in state on unrelated charges
24.	Product reseller - false documents pricing violation	Colorado	18 U.S.C. 1001	5/2/79 United States Attorney - Grand Jury
25.	Producer - crude reseller - false certification - stripper	W.D. Oklahoma	18 U.S.C. 1001 18 U.S.C. 1341	5/2/79 United States Attorney - Energy Unit
26.	Crude oil reseller low - tier certification manipulation	S.D. Texas	18 U.S.C. 1001 18 U.S.C. 1341	2/23/78 Direct to U.S.A. - U.S.A. - Grand Jury
27.	Natural gas diversion - failure to certify	E.D. Louisiana	18 U.S.C. 371 18 U.S.C. 1001	5/79 Energy Unit

	Type of Allegation	District	Possible Violations	Chronology of Actions and Status	
28.	Retail gasoline dealer price violation	M.D. California	DOE price viol.	5/18/79	Referral to United States Attorney & Department of Justice - U.S.A.
29.	product reseller - false statement re allocations	W.D. Oklahoma	18 U.S.C. 1001	4/79 5/7/79	Referral to Department of Justice Referral to United States Attorney U.S.A. & Energy Unit
30.	crude oil reseller - low - high certification manipulation	S.D. Texas	18 U.S.C. 1001 18 U.S.C. 1341	7/31/78	Direct U.S.A. & Energy Unit grand jury
31.	retail gasoline dealer price violation	N.D. California	18 U.S.C. 1001	11/78, 2/79	Referral to United States Attorney
32.	Product wholesaler-false documents regarding pricing	Massachusetts	18 U.S.C. 1001	3/79 3/79	Referral to Department of Justice Referral to United States Attorney
33.	product retailer - price violation false statement	New Hampshire	18 U.S.C. 1001		Declined
34.	product retailer - price violation false statement				Declined
35.	product reseller - false invoices	Michigan	18 U.S.C. 1001		Declined
36.	crude oil reseller high - low certification falsification	S.D. Texas	18 U.S.C. 1001	6/78	Referral direct to United States Attorney U.S.A. - Energy Unit Grand Jury
37.	product reseller false statements	N.D. Georgia	18 U.S.C. 1001	5/25/79	Energy Unit

	Type of Allegation	District	Possible Violations	Chronology of Actions and Status	
38.	Natural gas diversion - false statement	W.D. Pennsylvania	18 U.S.C. 1001 18 U.S.C. 1341		generated in field U.S.A.
39.	product retailer - price viol.	M.D. California	DOE price regulation	5/31/78	Referral to Department of Justice & U.S.A.
40.	Conoco, M & A Pert., Foremost refiner sale - price violation false invoicing	S.D. Texas	18 U.S.C. 1001	7/77 3/78	Referral to Deparment of Justice Referral United States Attorney U.S.A. & D.O.J. convictions
41.	crude producer, export	S.D. Alabama			Declined criminal civil action pending
42.	producer - reseller low high certification manipulation	S.D. Texas	18 U.S.C. 1341 18 U.S.C. 1001	7/31/78	Direct to U.S.A. - Grand Jury
43.	crude oil reseller low - high stripper certification manipulation	N.D. Oklahoma	18 U.S.C. 1001	5/23/79	Energy unit
44.	crude oil reseller low - high certification manipulation	S.D. Texas	18 U.S.C. 1001 18 U.S.C. 1341	7/31/78	Direct to U.S.A.
45.	crude oil reseller low - high certification manipulation	S.D. Texas	18 U.S.C. 1001 18 U.S.C. 1341	7/31/78	Direct to U.S.A.

Mr. CONYERS. Thank you. We will now hear from the Federal Bureau of Investigation, Mr. Francis Mullen. We likewise will incorporate your statement in full and you may proceed.

TESTIMONY OF FRANCIS M. MULLEN, JR.

Mr. MULLEN. Thank you, Congressman.

I, too, will read my statement in part here.

Congressmen Dingell and Conyers, Director Webster has asked me to convey his regrets in not being able to appear before you today. Understanding fully the importance of these hearings, he has asked me and my associates, Dana E. Caro and Joseph E. Henehan, to be available to testify today concerning the Federal Bureau of Investigation's role in handling oil reseller fraud cases.

You earlier indicated that Mr. Caro was Chief Inspector for the FBI. His prior assignment was Assistant Inspection Agent in Charge of the Houston FBI office, and in that capacity he had a personal role in the oil reseller investigations there.

Let me state at the outset that the Federal Bureau of Investigation, within its white-collar crime program, is fully committed to investigating two types of energy-related frauds. These pertain to both oil industry and coal-related investigations.

Our entry into the investigation of oil reseller fraud cases occurred on January 16, 1978, when the Federal Bureau of Investigation received the first referral of such a case from the Department of Energy.

At the present time the Federal Bureau of Investigation is investigating two basic types of oil fraud schemes, the daisy chain and the old to new or two-tier scheme.

Usually, the Federal Bureau of Investigation enters these investigations after the Department of Energy has determined that a criminal violation may exist and refers the case to the U.S. Department of Justice. It is my understanding that through an agreement worked out between the Department of Justice and the Department of Energy; Department of Energy is supposed to refer those cases it has determined may involve violations of criminal laws. After appropriate review by the Department of Justice, the case may then be referred to the Federal Bureau of Investigation. In conducting referral investigations, we sometimes determine other possible spinoff violations involving the same or other subjects. In such instances we initiate investigations.

Generally speaking, the Federal Bureau of Investigation's jurisdiction in investigating energy fraud cases lies in such Federal statutes as Fraud by Wire (18 U.S.C. 1343); Interstate Transportation of Stolen Property (18 U.S.C. 2314 and 2315); Mail Fraud (18 U.S.C. 1341); Theft from Interstate Shipment (18 U.S.C. 659); Fraud Against the Government—False Statements (18 U.S.C. 1001); Conspiracy (18 U.S.C. 371); and, if a pattern of criminal activity is developed, the Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. 1961 et seq.).

Presently, we are conducting investigations in approximately 35 separate oil-related cases, the vast majority of which are in Texas and Oklahoma.

The primary problems which we have encountered in these cases are developing expertise in the oil industry terminology and proce-

dures and in developing an understanding of the complex energy regulations.

We have also been conducting coal fraud investigations since early 1978. The investigations disclosed frauds involving: (1) Sale of worthless coal mines; (2) inflated or completely false engineering reports; (3) forged or counterfeit leases; (4) illegal collection and expenditure of escrow moneys; (5) filing of fraudulent Securities and Exchange Commission registrations; (6) double pledging of collateral; (7) false statements to banks; (8) theft and salting of coal shipments; (9) bankruptcy and other frauds too numerous to mention. The manner of the fraud or frauds is only bound by the imagination and ingenuity of the perpetrator.

There are currently over 100 cases under investigation by the Federal Bureau of Investigation in our Birmingham, Louisville, Mobile, Philadelphia, Pittsburgh, and Richmond Divisions.

Just last week we conducted a 3-day seminar on coal-related investigations at our training academy at Quantico, Va. This was attended by both agents investigating these cases and attorneys prosecuting them.

The most recent figures available indicate that 83 percent of our manpower working white-collar crime cases, and this involves 1,600 FBI agents, are assigned to high-priority matters, and we consider oil and coal fraud cases to be high priority matters.

Twenty-four agents are fully committed to oil-type investigations in our Los Angeles, Oklahoma City, and Houston offices.

I am convinced that in the short time we have been involved in these investigations, that we have achieved some success, and we will continue to pursue them vigorously with available resources. Mr. Chairman, I, too, am ready to answer any questions the committee may have.

[Mr. Mullen's prepared statement follows:]

STATEMENT OF FRANCIS M. MULLEN, JR., DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE

Congressmen Dingell and Conyers, Director Webster has asked me to convey his regrets in not being able to appear before you today. Understanding fully the importance of these hearings, he has asked me and my associates, Dana E. Caro and Joseph E. Henehan, to be available to testify today concerning the Federal Bureau of Investigation's role in handling oil reseller fraud cases.

Let me state at the outset that the Federal Bureau of Investigation, within its white-collar crime program, is fully committed to investigating two types of energy-related frauds. These pertain to both oil industry and coal-related investigations.

Our entry into the investigation of oil reseller fraud cases occurred on January 16, 1978, when the Federal Bureau of Investigation received the first referral of such a case from the Department of Energy.[1] This and subsequent referrals related to a period after mid-1973 when the Arab oil embargo served as the impetus for driving fuel prices to then unprecedented levels.

At the present time the Federal Bureau of Investigation is investigating two basic types of oil fraud schemes, the "Daisy Chain" and the "old to new" or two-tier scheme.

A "Daisy Chain" exists when, in the flow of a product from refining or manufacturer to final sale, middlemen are inserted to perform no useful function other than to inflate prices.

The "old to new" scheme or two-tier swindle involves the deliberate miscertification of oil, changing oil classified as "old" oil to "new" oil. This scheme was prompted by the two-tier regulatory pricing system which became effective in

[1] Florida Power Corporation case (pending) was referred to the Tampa Federal Bureau of Investigation Office by the United States Attorney's Office in the Middle District of Florida.

August, 1973, and which has as its primary purpose, the encouragement of domestic production of crude oil while at the same time allowing for some price regulation.[2]

Usually, the Federal Bureau of Investigation enters these investigations after the Department of Energy has determined that a criminal violation may exist and refers the case to the United States Department of Justice. It is my understanding that through an agreement worked out between the Department of Justice and the Department of Energy, Department of Energy is supposed to refer those cases it has determined may involve violations of criminal laws. After appropriate review by the Department of Justice, the case may then be referred to the Federal Bureau of Investigation. In conducting referral investigations, we sometimes determine other possible "spinoff" violations involving the same or other subjects. In such instances we initiate investigations.

Generally speaking, the Federal Bureau of Investigation's jurisdiction in investigating energy fraud cases lies in such Federal statutes as Fraud By Wire (18 USC 1343); Interstate Transportation of Stolen Property (18 USC 2314 and 2315); Mail Fraud (18 USC 1341); Theft From Interstate Shipment (18 USC 659); Fraud Against the Government—False Statements (18 USC 1001); Conspiracy (18 USC 371); and, if a pattern of criminal activity is developed, the Racketeer Influenced and Corrupt Organizations Statute (18 USC 1961 et seq).

Presently, we are conducting investigation in approximately 35 separate oil-related cases, the vast majority of which are in Texas and Oklahoma.

The primary problems which we have encountered in these cases are developing expertise in the oil industry terminology and procedures and in developing an understanding of the complex energy regulations. Since these are new types of investigation, we, along with the Department of Justice, have to determine on a case by case basis how the existing Federal statutes apply to the schemes which we encounter.

We have also been conducting coal fraud investigations since early 1978. The investigations disclosed frauds involving, (1) sale of worthless coal mines, (2) inflated or completely false engineering reports, (3) forged or counterfeit leases, (4) illegal collection and expenditure of escrow monies, (5) filing of fraudulent Securities and Exchange Commission registrations, (6) double pledging of collateral, (7) false statements to banks, (8) theft and "salting" of coal shipments, (9) bankruptcy and other frauds too numerous to mention. The manner of the fraud or frauds is only bound by the imagination and ingenuity of the perpetrator. Individuals involved in these cases include, but are not limited to, accountants, attorneys, engineers, and confidence men. The frauds are nationwide in scope and some involve losses to any and all citizens who pay surcharges for electricity generated by coal. There are currently over 100 cases under investigation by the Federal Bureau of Investigation in out Birmingham, Louisville, Mobile, Philadelphia, Pittsburgh, and Richmond Divisions.

Just last week we conducted a three-day seminar on coal-related investigations at our training academy at Quantico, Virginia. This was attended by both Agents investigating these cases and attorneys prosecuting them.

The most recent figures indicate that 83 percent of our manpower working white-collar crime cases are assigned to high-priority matters, and we consider oil and coal fraud cases to be high priority matters.

I am convinced that we have had some success in the area of oil frauds and coal frauds, and I assure you we will continue them vigorously with available resources.

Mr. CONYERS. Thank you both. We will begin the questions with Chairman Dingell.

Mr. DINGELL. Mr. Chairman, I thank you for your courtesy, and I would ask that Mr. Barrett of the staff of the Subcommittee on Energy and Power be recognized for questions at this time.

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[2] The two-tier pricing system: Each producer (driller) was required to determine the amount (number of barrels) of oil produced at each of his wells for each month during the year 1972. This total production was then used as a "base" figure. With the implementation of the two-tier pricing system, all oil produced up to the "base" figure would be priced as "old" oil, and any oil produced in excess of the base "oil" figure would be labeled "new" oil. "Old" oil would contain a price ceiling which was basically the posted price as of May 15, 1973, plus 35 cents a barrel for roughly the total price of $5.30 a barrel. The average cost of "new" oil, subsequent to May 15, 1973, was approximately $12 a barrel. Obviously a greater profit could be realized by the sale of "new" oil, and what is even more obvious is that if one could obtain large quantities of crude oil at "old" prices and resell it at "new" prices, profits could be enormous. The only control distinguishing between the "old" and "new" oil is that imposed on the producer or reseller by Department of Energy requiring them to certify the oil as either "old" or "new."

Mr. BARRETT. Mr. Keeney, at the hearing last Wednesday the subcommittees chose not to call a particular witness. Just for the record, we would like your confirmation that this was at the Department's request.

Mr. KEENEY. It was at the Department's request and we very much appreciate the committees' sensitivity.

Mr. BARRETT. Mr. Keeney, the Conoco matter was brought to the Department's attention on March 17, 1977, when Conoco came into the Department of Energy, then the FBI asked and disclosed certain facts. The facts indicated that a kickback scheme had been going on, that an amount of money somewhere between $1.4 and $2 million was involved, that there was established a separate set of books for the recording of these transactions; and that also there was evidence that Conoco had made certain illegal payments.

This matter was brought to your attention that same day that Conoco came in. Thereafter, the Department of Energy people have told us that they met with you and discussed the matter with you as it was progressing, but that the decision to develop the matter investigatively was made by your suggesting to DOE that they do the investigation and that you would offer them assistance along the way; is that correct?

Mr. KEENEY. If we are talking, Mr. Barrett, about an early stage, it goes back, the Conoco matter goes back quite awhile. I discussed this with Mr. Bloom at an early stage when it appeared to be—they had leased and they were going on a civil route. March 1978, when they brought it to us it was brought for criminal referral, and it was given to an attorney in our fraud section for review.

Unfortunately, the attorney to whom it was given also had the resposibility at that time for the development and trial of a major land fraud case in Philadelphia—in Florida, and an SEC case in Philadelphia.

Now there was slippage there on the Conoco in the handling, and we think we have taken care of that slippage by the setting up of the energy unit so that all of these cases now go through Mr. Fishkin, and we have a total of nine attorneys committed to the situation which we did not at that time.

Mr. GORE. Will the counsel yield?

Mr. BARRETT. Yes, sir.

Mr. GORE. You say that unfortunately it was assigned to someone who did not have time to do it. Why was it assigned to someone who didn't have time to do it?

Mr. KEENEY. Congressman Gore, we are faced with a priority, with priority problems. We have only got so many resources and so many attorneys, and unfortunately that went to an attorney who got tied up with other matters that were urgent at the moment, and we just did not have anybody else to put on that could handle it quickly, but we think we have corrected that situation with a specialized unit on energy.

Mr. VOLKMER. Will counsel yield? What is the name of the attorney it was referred to?

Mr. KEENEY. Jerry Egan.

Mr. VOLKMER. Jerry Egan?

Mr. KEENEY. Yes.

Mr. VOLKMER. Is he still with the Department?

Mr. KEENEY. He is.

Mr. VOLKMER. Thank you.

Mr. GORE. But the bottom line is that a major fraud case involving oil, a major oil company, was given to an attorney who didn't have time to do it, and that is now viewed as unfortunate. How long did it stay in his hands before you realized he didn't have time to do it?

Mr. KEENEY. He got it in March. We got it in July of 1977 and it went out in March of 1978. Mr. Gore, Mr. Volkmer, I don't want to put the blame for that on an individual attorney. It was a problem that goes to the administration of the section. They were overwhelmed with work. They were meeting, trying to meet priorities the best they could.

Mr. GORE. Did you ask for additional resources?

Mr. KEENEY. We asked periodically for additional resources. We have the resources right now, Mr. Gore.

Mr. GORE. Did you get the additional resources you asked for at that time?

Mr. KEENEY. We got an increase the next fiscal year, yes.

Mr. GORE. A year later. You understand the statute was running on these cases. Here is a case where a major oil company turned itself in. It is the only case that has been made. It turned itself in in March 1977. FEA kept it for 5 months, and in August 1977 referred it to the Department of Justice, and then 9 months later you finally got around to sending it to the attorney prosecuting it, just before the statute ran out, and he finally got a conviction on the very day that the statute of limitations ran out.

Now you say that there was a lack of resources, but that is just not an adequate response in my view because we are faced with these major fraud cases, and there has been no activity. Millions of dollars are involved. The American people want vigorous prosecutions of oil fraud cases, and yet there hasn't been such an effort. To say that you don't have the resources, I understand what you are saying, but I guess that it is not going to satisfy this panel.

I thank the counsel for yielding.

Mr. KEENEY. Mr. Fishkin reminds me, Mr. Gore, that the statute would have gone on some of the violations, some of the counts, but it would not necessarily have gone on the whole case at the time the plea was entered.

Mr. GORE. With the counsel's indulgence, I have heard that before from DOE and the Department of Justice. We get to this point where the statute of limitations runs out in criminal violations, and at times I have called the Department of Justice and said, "Look, the statute is about to run out on this case." We had the *Ven* fuel case back there and we are told don't worry, because of some legal theory we can cure that around this particular statute of limitations and we can still catch them 6 months later on a variation of the charge that has a reduced penalty. The case may be more difficult to make but don't worry because the statute hasn't completely run out.

It just seems to me that you ought to be enough on top of the situation that you would prosecute the case before the statute of limitations runs out on the criminal violation, for which the penalty is most severe, and you ought to have the resources to do that.

I yield back to counsel.

Mr. BARRETT. Mr. Keeney, could I direct your attention to the chart that says "Conoco Chronology." Is there anything on that chart that you would disagree with?

Mr. KEENEY. One thing I don't understand, maybe you can explain it, Mr. Barrett, the 37–8, Canales sent the wrong files. I don't understand what that is.

Mr. BARRETT. Mr. Canales testified that the materials he was originally sent with the referral memorandum related not to that referral, but to another matter that had been the subject of another grand jury investigation involving the same company.

Mr. KEENEY. I just can't comment on it.

Mr. BARRETT. And it took him another 2 weeks before he got the correct files.

Mr. KEENEY. I can't comment on it. I just don't know.

Mr. BARRETT. So that would be the only question you would have with respect to this?

Mr. KEENEY. I would comment on "must redo the entire investigation." I read Mr. Canales' testimony, and it is true that frequently when a referral comes in from DOE a substantial refocusing has to be done, but they have done a lot of basic work in connection with the investigation. If their work had not been done, the refocusing could not be achieved, so it isn't a case of somebody coming in and dumping something on your desk and you say, you just throw it out and you say we are going to start all over again. It's a question of refocusing the investigation that has been done, putting it in a criminal context.

Mr. DINGELL. Would counsel yield?

Mr. Chairman, I would ask unanimous consent the chronology be inserted in the record at this point.

Mr. CONYERS. Without objection, it is so ordered.

[The material requested may be found in the files of the subcommittees.]

Mr. DINGELL. Is the chronology of the events accurate?

Mr. KEENEY. It is fairly accurate.

Mr. DINGELL. Do you have a disagreement with any portion thereof?

Mr. KEENEY. I think it is a general reflection of the Conoco situation.

Mr. DINGELL. In other words, you are telling us you have no differences with the chronology in the *Conoco* case as set forth by the chart?

Mr. KEENEY. Except I don't know about the wrong file, Chairman Dingell, but I know there was delay. We acknowledge there was delay in Conoco. We think we have taken adequate steps to preclude a recurrence of that sort of a situation.

Mr. DINGELL. I would pray so, but can you tell us what you have done to assure the kind of delay that we are discussing here in the *Conoco* case will not repeat itself? What are you doing to prevent that occurring?

Mr. KEENEY. We have a status with respect to all the referrals we have received. We have nine attorneys following these various referrals; we are utilizing services of eight separate U.S. attorney offices in addition to our own staff.

Mr. DINGELL. What does that do to prevent you from sending the wrong files down to your local U.S. attorneys for purpose of prosecution, or what does it do to prevent the kind of delay we see in the *Conoco* case from transpiring? The Conoco matter was referred to the Department of Justice in July 1977. Canales was sent the wrong files in March 1978. Finally, he gets the correct files in April 1978. It was sent to the grand jury in July 1978, and finally in August 1978, plea bargaining has been concluded.

It strikes me if this is the best you folks can do when a company comes in and says we did wrong, we are in trouble when you handle the matters relating to honest criminal activity.

I yield back to counsel.

Mr. CONYERS. Would you yield momentarily, please, to Mr. Raikin?

Mr. RAIKIN. Mr. Keeney, when the attorney for Conoco came in on March 17, 1977, and essentially confessed to the whole case, or much of it, to Mr. Bloom at the Department of Energy, did Mr. Bloom immediately that same afternoon go across the street and meet with you in the Justice Department?

Mr. KEENEY. I don't know. I have no recollection of his coming. He may or may not. I don't know.

Mr. RAIKIN. Mr. Bloom advised us that he did. Do you recall anything about that meeting with Mr. Bloom?

Mr. KEENEY. We have had many conversations.

Mr. RAIKIN. Do you recall Mr. Bloom telling you at that meeting on the same day that Conoco confessed, that he, himself, as a top enforcement officer at DOE charged with the responsibility for enforcement against the 39 major U.S. oil companies, had no criminal investigation experience except for criminal intent citation that one of his clients once received?

Mr. KEENEY. I was aware of the fact that Mr. Bloom had limited criminal experience. Earlier in the game, with respect to this, when there was a question of immunization, informal immunization, of witnesses by DOE, I put him in touch with the U.S. attorney's office in Houston; I had an assistant assigned to help them so that we didn't spoil a criminal case by immunizing somebody who probably should not have been immunized.

Mr. RAIKIN. Do you recall Mr. Bloom advising you on March 17 that he was in desperate need of your assigning him FBI agents and Justice Department personnel because he felt he was completely over his head on this matter?

Mr. KEENEY. Mr. Raikin, he did come to me; I did put him in touch with an assistant U.S. attorney in Houston. I don't recall the specific date or the details of the conversation.

Mr. RAIKIN. Thank you.

Mr. CONYERS. The Chair recognizes the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman. We are beating a dead horse on the *Conoco* case, but it does seem ironic that a company completely guilty can take this long to get any kind of response, and conviction can come on the very date that the statute runs out.

Mr. KEENEY. I didn't——

Mr. GORE. They conducted an in-house investigation with their own attorneys; they found the wrongdoing on their own; and they

came to the Federal Government and said, looks like we violated some laws; here is the evidence. Isn't that right?

Mr. KEENEY. They said we have uncovered a situation internally we don't think the corporation is responsible for. That is the way they came. They did not come in and volunteer to plead guilty. The guilty plea came only after they were told that they were being charged. That was at the later stage, right before the entry of the——

Mr. GORE. But they conducted the investigation themselves.

Mr. KEENEY. They conducted an investigation and turned it over to DOE.

Mr. GORE. That is right. And under those circumstances it takes 5 years to get a conviction; then it is no wonder that so many others have gone off scot-free, particularly when they are not as cooperative as Conoco was.

Mr. KEENEY. Mr. Gore, what we did when we got into it—and we were a little slow getting into it—but we were concerned that in Conoco the blame was being put on a lower level official, and we wanted to satisfy ourselves that we were going up as high into the corporate setup as we could go. We had difficulties in that regard.

Mr. GORE. You didn't want to satisfy yourselves too much, because you gave it to somebody who didn't have time to do it.

Mr. KEENEY. I am telling you after we got into it. There was delay in the fraud section. I am telling you what happened when the Department of Justice and U.S. attorney got into the investigation actively.

Mr. GORE. I think the assignment of the case to somebody who didn't have time to do it, whom it took 9 months to get the referral down to the prosecutor, is a perfect example of the kind of priority that this particular kind of case has been given. The oil reseller cases have been assigned, for all practical purposes, the lowest priority, even though the amounts of money involved are absolutely enormous.

Mr. KEENEY. You are ignoring the fact that we have taken substantial steps to keep this sort of thing from happening in the future.

Mr. GORE. That is what is said every time, and I hope to be convinced. I genuinely hope you have taken steps to prevent this from occurring, but they say this every time, and it doesn't happen.

Let me turn to a current case.

I will be glad to yield to the chairman.

Mr. DINGELL. You have indicated you have assigned attorneys to specific responsibilities in this matter. Are these the only responsibilities these attorneys will have during this time, or will they continue to have other responsibilities?

Mr. KEENEY. The people in the energy unit devote very substantial amounts, over 50 percent of their time. I think some are 100 percent.

Mr. Fishkin can answer more directly.

Mr. DINGELL. Do they continue their old responsibilities?

Mr. FISHKIN. They continue their old responsibilities until those cases are finished, and then 100 percent on energy.

Mr. DINGELL. Will they be assigned new cases?

Mr. FISHKIN. Only in the energy area.

Mr. DINGELL. So they continue their old responsibilities; is that right?

Mr. KEENEY. Until they wind them up.

Mr. DINGELL. What are those?

Mr. KEENEY. Various matters. I referred to Mr. Egan's assignment to a major land fraud in Florida, an SEC case in Philadelphia. They have a lot of responsibilities.

Mr. DINGELL. Could you give us, please, the names of the persons who have been assigned to this responsibility, and the cases they have pending?

Mr. KEENEY. We will do that.

Mr. DINGELL. We will determine whether or not in consultation with you those matters should go into the record, but I want to know what the responsibilities are.

You are telling us this is just a reassignment of personnel and not an assignment of new personnel. Is that right?

Mr. KEENEY. It is, for the most part, an assignment of experienced fraud section personnel; yes, sir.

Mr. DINGELL. It is not assignment of new personnel, nor are the personnel assigned to these responsibilities being relieved of old responsibilities.

Mr. KEENEY. We are trying to break them off as quickly as we can.

Mr. DINGELL. And you are having difficulty doing that because they are dealing in complex matters consuming a substantial portion of their time.

Mr. KEENEY. It is proceeding satisfactorily, Mr. Chairman.

Mr. DINGELL. Are any of these panels you have referred to—attorneys—being given direct assistance from Department of Energy auditors and personnel or IRS personnel?

Mr. KEENEY. I missed the first part of the question.

Mr. DINGELL. Are any of these task forces that you have alluded to being given assistance from Department of Energy auditors, Department of Energy attorneys, Department of Energy personnel, or personnel from Internal Revenue Service?

Mr. KEENEY. The answer at the moment with regard to the IRS is no.

Mr. DINGELL. How about the Department of Energy?

Mr. KEENEY. Department of Energy, we have auditors assigned on the individual matters as they are sent out for prosecutive consideration.

Mr. DINGELL. Are they compelled to communicate with your agency through the Washington office of the Department of Energy and through the Washington offices of the Department of Justice and then back down?

Mr. KEENEY. No, sir.

Mr. DINGELL. They are not?

Mr. KEENEY. They work on—once we refer the matter out to the field, then there is total communication between the DOE auditors and DOE personnel in the field and the prosecutor who has been assigned.

Mr. DINGELL. That is after the case has been referred; is that right?

Mr. KEENEY. Yes, sir.

Mr. DINGELL. But until the time that the case is referred, DOE attorneys, DOE auditors, DOE personnel do not participate; is that right?

Mr. KEENEY. They prepare the referral, send it to us; we do have some communication with DOE lawyers in Washington.

Mr. DINGELL. Your communication is through the Washington office of DOE; it is not through——

Mr. KEENEY. That is right.

Mr. DINGELL. That is most remarkable administration, and I wish to address that on my own time.

I thank the gentleman from Tennessee.

Mr. GORE. In the time remaining, let me ask you about the *Citmoco* case. This is a case involving massive fraud, payments of $150,000 to a vice president of Gulf Oil Corp.—half while he was still working for the company and half after he left.

The energy people had this case for 2½ years, and it was referred to the Justice Department for criminal prosecution back in July of 1978, and it is still in your Department.

Can you give us an explanation of the apparent slow pace or unwillingness to proceed with this case? And let me make clear for the record that the reason for these questions is merely to determine the allocation of personnel within your department, the efficiency with which you are managing your affairs and should not be interpreted as pressure from the Congress to make a decision one way or the other on the merits of a case that you have to decide upon. But can you tell me about the pace of your handling of this case?

Mr. KEENEY. The case is closed as far as criminal proceedings are concerned. It is open insofar as civil litigation.

Mr. GORE. Then you wouldn't have objection to the discussion of the *Citmoco* case; is that right?

Mr. KEENEY. Mr. Fishkin will be glad to answer your questions, Mr. Gore, on that subject.

Mr. GORE. What did you do about the payments of $150,000 to Mr. Coates?

Mr. FISHKIN. Congressman, the Citmoco matter was first referred in 1975 and was investigated by a Federal grand jury in the southern district of New York. The southern district at that time declined prosecution. The case was again referred in 1978, both to the Department of Justice and to the southern district of New York. The southern district looked at it again; a senior attorney in the Department of Justice looked at it again, and both times we found that from the criminal point of view the matter had no prosecutive merits. The case is still the subject of a civil action going on in Mobile right now, being handled by the Civil Division.

Mr. GORE. So it was closed by a recommendation not to prosecute?

Mr. FISHKIN. The case had, as I said, no prosecutive merit.

Mr. GORE. Well, what about this payment of $150,000 to the vice president of Gulf Oil? Are you familiar with that?

Mr. FISHKIN. Yes, sir, I am.

Mr. GORE. And there is nothing wrong with that, in your opinion?

Mr. FISHKIN. Congressman, in order for us to prosecute, we must be able to prove beyond a reasonable doubt a crime has been committed, and the individual did it. If we cannot do that, we make a determination that the matter has no merit.

Mr. DINGELL. Could we have those documents, Mr. Chairman?

Mr. CONYERS. You are referring to the documents in the case now the subject of discussion?

Mr. DINGELL. The declination of it, but there may be other matters we should look at.

Mr. CONYERS. I think those should be referred to the staffs, and we will subsequently determine what might be appropriate to introduce in the record.

Mr. DINGELL. I cordially agree with you on that point.

Mr. CONYERS. Is there any objection, Mr. Keeney, to providing these documents?

Mr. KEENEY. No objection, except we would ask that because of the pending litigation that they not be made public at this juncture, unless the committee has some compelling need.

Mr. DINGELL. I concur fully on the matter of not making them public at this time until the staff reviews them. I do observe that the declination indicates there is no criminal prosecution pending, nor intention to apply, so I don't think the comments just made have any solid foundation.

Mr. KEENEY. Except to the extent they impact on the civil litigation. I don't know whether they would or not. We would have to look at it.

Mr. CONYERS. We would have to look at it likewise.

Mr. KEENEY. I concede if the committee has strong need to make them public, we would have no objection.

Mr. CONYERS. Thank you very much.

Mr. GORE. I think it is one example of how these cases end up, very few prosecutions have been brought, and I guess it is only fair to suspend judgment until we look at the evidence that you felt was not substantial enough to proceed on a prosecution.

I thank the chairman for his indulgence.

Mr. CONYERS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I sat through the hearings that were held on Wednesday with a considerable amount of interest. The testimony that was given under oath at those committee meetings on Wednesday indicates that there is a monumental amount of paper shuffling and passing the buck on a case that could well be an economic Watergate. For example, the two major prosecutions, the *Conoco* case, and the *Florida Power & Light* case, the initial information came to the local U.S. attorney, not through Government investigative channels, either through the Department of Energy or the Department of Justice, but from reports which appeared in the news media.

Mr. Hallman testified that the statute of limitation ran out on one case he knew of, that there were no written procedures relative to the referral of cases from the Department of Energy to the Department of Justice, and that in at least one instance the Department of Energy material that was sent to the Department of Justice was of such poor quality that the entire matter had to be

completely reinvestigated before the case was brought to the grand jury.

And, finally, in one case the Department of Justice attorney that received it initially was extremely inexperienced, that there was at least a 2-month delay that took place between the time there was information given to the Department of Justice and the time there was some action taken on it because of vacation time while the statute of limitation was running out.

It seems to me that a lot of the problems relative to statute of limitations expiring comes about as a result of late referral of information from Energy to Justice. By statute, the Department of Justice is responsible for overseeing criminal investigations, and what steps are being taken to involve the Department of Justice in the early part of the investigations that are going on within the Department of Energy, so that there could be some coordination between the two agencies?

Mr. KEENEY. Mr. Sensenbrenner, that is an area where I think we have moved, and I think we have moved effectively. We do have a continuing dialog with the Department of Energy people. When they run into anything where they think it might have criminal potential, they are coming to us, and they are discussing it with us. And that is particularly true with respect to any matter that is running close to the statute of limitations.

At the moment, I would say that we have got that problem somewhat under control.

Mr. SENSENBRENNER. Is there any written memorandum or understanding between the Departments of Energy and Justice, when Energy would refer a case over, that the auditors indicate there is potential criminal violations?

Mr. KEENEY. The only thing that is in writing on that subject is exchange of correspondence, and then after there is a criminal referral, they would file what is called a notice of probable violation which is an administrative civil type proceeding to recover the amount that was lost.

Mr. Sensenbrenner, I frankly would not know how to articulate precisely a memorandum of understanding that would cover all the situations that would arise in the energy area. It is a highly technical area. I, for one, am quite pleased with the idea that once energy gets any indication of possible criminality, they discuss it with us. Those discussions lead to a number of alternatives. One is that we give them guidance with respect to additional inquiry that they should conduct. The other is they refer it over to us immediately so we can put the resources of the FBI, trained criminal investigative resources, and the resources of a grand jury, to work, if that is indicated.

Mr. SENSENBRENNER. Is there any effort to develop some kind of joint auditing capability so that the problem that Mr. Canales testified to last Wednesday of having to reinvestigate a lot of the material that is sent over from the Energy Department would not exist in the future?

Mr. KEENEY. Well, that is hard to answer, Mr. Sensenbrenner, because it is in this area the auditors have got to go through and look at the books and records and find out what indicia fraud exists. Once those indicia fraud are found, that is when you bring

the trained criminal investigators and auditors from the FBI and those with accounting expertise into the investigation.

Mr. SENSENBRENNER. GAO indicated that the Department of Energy procedures required that the Department go further than is necessary in referrring the case over to Justice for possible prosecution. Has anything been done to correct that particular problem?

Mr. KEENEY. That is something that did exist in the past, Mr. Sensenbrenner. That is what I tried to address in my statement, that up until early 1978 there were some problems in that area. We have been working very closely with DOE now, and we think we have those problems ironed out.

Mr. SENSENBRENNER. Have you experienced recently any problems of DOE handing you a case very close to the expiration of the statute of limitation, and by close I mean within 9 months to a year, since I recognize these cases are tremendously complicated and require quite a bit of work before the case is actually presented to the grand jury?

Mr. KEENEY. Yes, sir, we have one I know of. We moved it immediately into the U.S. attorney's office. We put our people on it, and we are hoping we can meet the statute of limitation deadline, hoping we can meet—if there is a criminal case, that we will be able to file it in time. That is the only one I know offhand, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have information that one case was referred to the FBI——

Mr. KEENEY. My colleague is correcting me on it. He says there is more than one.

Mr. SENSENBRENNER. I have information one case was referred to the FBI office in Chicago within the last month with 6 weeks to go on the statute of limitations.

Mr. KEENEY. Well, I discussed that with our people. That is the case I was referring to actually, and it is a close one. It is a little more than that. The statute, my understanding is, would run sometime in August, which is still a short deadline, I agree.

I might say in that particular case, it is venued in Chicago. That is another companion case involving the same company dealing with another power company where we do have—the referral is much more timely.

Mr. SENSENBRENNER. But doesn't this long comedy of errors that the gentleman from Tennessee and I have both referred to indicate that there is a great need for improved coordination and better procedures between your agency and the Department of Energy, so that vacation time and people being too busy would not interfere with the potential criminal indictment?

Mr. KEENEY. Well, one of the big problems as far as statute of limitations is concerned is that we are dealing with a 5-year statute of limitation which means that the conduct that took place had to take place, at least an overt act of some sort running into some time into the middle of 1979 for the case to still be viable. Several of these have turned up. That is all I can say, and they have gotten over to us late. I can't go beyond that, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I yield back my time.

Mr. CONYERS. The gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. Keeney, this written testimony you presented us with today is less than adequate based upon the evidence that we heard last Friday. In that testimony by a Department of Justice official, as well as an attorney within the Office of General Counsel of the Department of Energy, the statement was made, and backed up by the Department of Justice official, that in their best estimation there was a coverup going on within the Department of Justice involving collusion with major oil companies, including, possibly utilities who were the final purchasers of energy.

Mr. KEENEY. Who said that? I read the testimony, and I didn't see that. No Department of Justice official said that.

Mr. SYNAR. Mr. McNeff, who was with the Department of Energy?

Mr. KEENEY. Mr. McNeff, in the Department of Energy—the Department of Justice with respect to the credibility of Mr. McNeff has been set forth in a letter to Chairman Dingell, in which we said very clearly, and I think Mr. Canales, if you read his testimony carefully, concluded, Mr. McNeff gave us zero with respect to credible allegations.

We have interviewed, reinterviewed, and done everything we can possibly do with Mr. McNeff, and he does not support the allegations.

Mr. SYNAR. Is it your statement before this committee this morning that there is no, let's say, coverup, due to a comedy of errors, lack of personnel, between the major oil companies, the Justice Department, and the Department of Energy?

Mr. KEENEY. I don't want to answer that question in the context you put it. We said that there was some delay because of lack of personnel in the fraud section of the Criminal Division. I don't want to answer any question that includes within that allegations of corruption that are made by Mr. McNeff or anybody else. There is absolutely no credible evidence we found to support the allegations of Mr. McNeff. Mr. Canales told you that; we told you that about 9 months ago in a letter. If you have something we don't have, we would appreciate you turning it over to us.

Mr. CONYERS. Would the gentleman yield at that point?

Mr. SYNAR. Yes.

Mr. CONYERS. You have read Mr. McNeff's testimony, I take it?

Mr. KEENEY. We have. We have interviewed him and done everything we possibly can to get at specific allegations.

Mr. CONYERS. Then there is nothing that is credible in his statement or in the interviews that you have taken?

Mr. KEENEY. Mr. McNeff has gut reactions; he has instincts; he has feelings; he has suspicions, but no credible leads to give us. We have looked into everything he could give us——

Mr. CONYERS. Do you recall when you interviewed Mr. McNeff?

Mr. KEENEY. We have interviewed Mr. McNeff a number of times.

Mr. CONYERS. Would somebody put on the record what dates the interviews were?

Mr. MULLEN. The FBI concurs in Mr. Keeney's observations. Mr. McNeff has appeared before a grand jury in Houston and made his information known.

Mr. CONYERS. Have you interviewed him?
Mr. MULLEN. No, sir.
Mr. CONYERS. Has anybody on your staff?
Mr. MULLEN. Yes, sir.
Mr. CONYERS. What date, and identify yourself?
Mr. CARO. I am Dana Caro. I interviewed Mr. McNeff in June of 1978 at Houston, Tex.
Mr. CONYERS. Were any U.S. attorneys present?
Mr. CARO. I first met him in the presence of Mr. Canales, I believe, March 1, 1978, when we——
Mr. CONYERS. That is different from him being interviewed by you and meeting him.
Mr. CARO. He was interviewed, by his request, during June of 1978 in my office.
Mr. DINGELL. Mr. Chairman, if you would permit, is that the only interview of Mr. McNeff?
Mr. CARO. No, he was interviewed on several occasions by several staff people in Houston, but I interviewed him once.
Mr. DINGELL. Who interviewed him and when, if you please?
Mr. CARO. I would have to refer to my records.
Mr. DINGELL. Would you please submit that for the record—who interviewed Mr. McNeff and when?
Mr. CONYERS. And I would like to get that same information from the Department of Justice, the U.S. attorneys.
Mr. KEENEY. It is my understanding that U.S. attorney Canales, himself, interviewed McNeff.
Mr. DINGELL. Might have, or did?
Mr. KEENEY. It is my understanding that he did.
Mr. VOLKMER. Would the gentleman yield on that point?
It is your understanding from whom?
Mr. KEENEY. My understanding from reading Canales' testimony, for one thing.
Mr. VOLKMER. You are saying in Canales' testimony it says Canales said he interviewed Mr. McNeff?
Mr. KEENEY. That is my reading of the testimony. In addition to that, I have talked to Mr. Canales, and I understand from him he interviewed him. Whether or not there were joint interviews with the FBI or whether he did it himself is the only question I have.
Mr. VOLKMER. You are talking about the same interview, one interview?
Mr. KEENEY. But there is more than one interview. We know that. We have done everything we can possibly do. We have put every bit of effort we could possibly put into trying to ascertain from debriefing of Mr. McNeff whether or not he had credible allegations.
Mr. DINGELL. If you would permit, who debriefed or interviewed Mr. McNeff?
Mr. MULLEN. We have copies of that.
Mr. DINGELL. We have been told somebody talked to him. You said you read Mr. McNeff's testimony. You then said that you have read Mr. Canales' testimony. You tell us now that there was a debriefing. What transpires as regards to Mr. McNeff, or, gentlemen, do you know?
Mr. KEENEY. Let Mr. Caro start out, and I will add to it.

Mr. CARO. Mr. Chairman, to get perspective, Mr. McNeff was working with us on a daily basis. We had daily contact with him at Houston, Tex.

Mr. DINGELL. You had daily contact?

Mr. CARO. Our task force did; yes, sir.

Mr. DINGELL. Your task force under the rule is not permitted to have contact until the matter has been referred down there.

Mr. CARO. The matter was referred to us.

Mr. DINGELL. You only had contact on the matter referred to; is that right?

Mr. CARO. We had daily contact with Mr. McNeff.

Mr. DINGELL. Just a minute. You had contact with him, under your manuals and instructions, on matters that had been referred. You did not have contact with him on other matters or else you were violating your own rules.

Mr. CARO. We had contact with Mr. McNeff on all energy-related matters after the task force was instituted, and he was assigned as the DOE representative on the task force.

Mr. DINGELL. I was told in comments of earlier witnesses we were advised that there was no assignment of DOE personnel to the task forces. Which is the fact?

Mr. CARO. The Department of Energy assigned Mr. McNeff as the liaison between the Department of Justice and Energy. As such, when we started the investigation, he was dealing with us on a daily basis.

Mr. DINGELL. He was dealing with you on a daily basis on cases which were subject to consideration by the task force which had already been referred——

Mr. CARO. And any other matter he wanted to bring to our attention.

Mr. DINGELL. Haven't you told us in your testimony, gentlemen, that DOE is not permitted, and your folks are not permitted, to discuss matters aside from those which are referred.

Mr. CARO. The Department of Energy can discuss anything they want with us.

Mr. DINGELL. But only through your Washington offices with your Washington office.

Mr. CARO. I don't know what the situation was back in Washington.

Mr. DINGELL. Didn't you just tell us in your testimony, Mr. Keeney, that your policy is that DOE confers with you through their Washington offices and not through their field personnel?

Mr. KEENEY. Prior to referral up to the U.S. attorney.

Mr. DINGELL. When a matter is referred, what is the subject of discussion between the DOE people and your people in the field? It is only on matters that are referred, is that not so?

Mr. KEENEY. Can I explain? We are now talking about referral. I am talking about referral involving an energy investigation. What I think you are talking about are allegations by Mr. McNeff that there is no corruption within DOE and the Department of Justice. They don't need any formalities in that regard. The U.S. attorney is authorized to work with him in that regard. So is the FBI. We are not talking about referrals.

Mr. SYNAR. If I could reclaim my time, on that point, we have the FBI and the Department of Justice, which has just challenged the credibility of the major witness in this hearing, and yet between the five of you sitting there, nobody can tell me how many times you met with him, or the quality of the investigation.

Mr. KEENEY. Yes, we can.

Mr. CARO. I have been waiting to do that.

Mr. SYNAR. Tell us about the quality of the investigation on Mr. McNeff.

Mr. CARO. To set the predicate again, Mr. Congressman, on March, 1978, we established a task force in Houston, Tex. It was the first task force established. It was headed by Mr. Canales and myself. Mr. McNeff was assigned as liaison. And, as such, on a daily basis we met with Mr. McNeff during the early part of that task force.

In June of 1978, he requested to be interviewed by one of my staff people and also by myself.

Mr. SYNAR. We are talking here—well, why don't you finish.

Mr. CARO. We dealt on a daily basis, on a business basis, between the Department of Energy and the FBI and the U.S. attorney's office with Mr. McNeff and others in the Department of Energy on a daily basis. During June of 1978, he requested to talk to one of my agents and he talked about some potential violations of criminal law between the scope of the oil investigation that we were conducting. He subsequently asked to talk to me as acting head of the office. We conducted that—we took his information; we conducted the investigation; he appeared before a Federal Grand Jury, and the results are going to be in the hands of the U.S. attorney in Houston, Tex.

But he was meeting with us on a daily basis with the FBI, with Mike Williamson, and others in our office.

Mr. SYNAR. All that time, you found nothing which would give you any indication that there was criminal activity within the task force, itself, the Department of Energy, Justice, or the oil companies?

Mr. CARO. There have been no indictments returned, sir.

Mr. SYNAR. OK.

You make some interesting comments, Mr. Keeney, and I quote from your testimony: "For the immediate present, the Department appears to have adequate resources available for the assignment to this program."

Mr. Keeney, how would you compare the money lost to white-collar crime involving the matter before this committee and, say, the money lost to white-collar crime involving illegal gambling activities?

Mr. KEENEY. I can't give you figures, but white-collar crime is astronomical compared to gambling at this juncture. The Department of Justice has substantially deemphasized gambling investigations.

Mr. SYNAR. OK, are we talking about numbers in the billions—potentially billions of dollars in the reseller cases—that the Department of Justice would be involved in?

Mr. KEENEY. You mean of the amount of loss——

Mr. SYNAR. Yes.

Mr. KEENEY. Yes, we are.

Mr. SYNAR. If my head count is right between the testimony we have had up to date, we have 9 people in Justice, 15 people in DOE, and 13 FBI people assigned to this area. Is that correct?

Mr. KEENEY. No, that is not correct.

Mr. SYNAR. What is correct? This is from your testimony. There are 15 DOE auditors, 11 agents, 2 accounting technicians, and 9 attorneys.

Mr. KEENEY. If you are referring to my testimony, I also went on and talked about the various U.S. attorneys' offices.

Mr. SYNAR. Obviously from the testimony you have given, and we have had previously, they are not taking that active of a role.

Mr. KEENEY. I wouldn't say that.

Mr. CONYERS. Where are they being active, Mr. Keeney?

Mr. KEENEY. We have them listed here where they are active: Brooklyn, Los Angeles, Oklahoma City, Denver——

Mr. SYNAR. How many indictments have come down from the three you just mentioned, or how many pending? Don't they go through you in the final stage?

Mr. KEENEY. Yes, they do. I will let Mr. Fishkin answer that, if I may.

Mr. DINGELL. Would the gentleman yield? Can we see these documents, if you please, that flowed from the interviews of Mr. McNeff? Obviously there were reports and documents filed by the persons who interviewed him.

Mr. KEENEY. We will give you everything we can, Mr. Chairman, except grand jury material which we can't give you.

Mr. DINGELL. We are not interested in grand jury material, but the documents which relate to the interviews of Mr. McNeff, and which flowed therefrom. And also whatever documents would relate to whatever interviews flowed of DOE personnel and other persons as a result of Mr. McNeff's interviews and comments through the Department of Justice. Obviously if you have something you can tell us that ought not be seen by the committee, we will be glad to discuss that with you. If you have something that would impair an ongoing investigation or whose release would impair a trial, we will be delighted to discuss that matter with you as regards the release to the public, but I think the committee should see these, and you folks are telling us a man was interviewed, and we are curious if he was: (1) Interviewed, (2) interminably, and (3) what was the result of these efforts.

Mr. KEENEY. He has been interviewed innumerable times. Mr. Chairman, we gave you a letter in which we set forth our evaluation of the allegations.

Mr. DINGELL. I am not asking for a letter setting forth the allegations. I am asking for information in-house so I can evaluate whether or not our evaluations have merit.

Mr. MULLEN. I have copies of four interviews with Mr. McNeff. I will check with the Department, and if they can be made available, we will make them available.

Mr. DINGELL. I don't want you to think I lightly intend to lay down and be advised by the Department of Justice whether you can make the information available to us or not. I want to see the

information. If you can't make it available to us, you better have a very, very good reason as to why you cannot do so.

Mr. CONYERS. Mr. Keeney, the Subcommittee on Crime emphatically joins in with the chairman for that request.

Mr. KEENEY. I understand.

Mr. CONYERS. If we could elicit a response from Mr. Fishkin to the original question.

Mr. FISHKIN. Mr. Conyers, in Oklahoma City, there has been one indictment of a crude oil reseller case going to trial next Monday. There are a number of pleas pending in Oklahoma City. There are continuing investigations going on in Oklahoma City.

In Brooklyn, two misdemeanor informations filed to date with pleas to them. There is pending a possible additional indictment.

In Denver, an indictment filed a number of weeks ago. There are a number pending. In Houston, two indictments filed plus a number pending. There have been a number of pleas to date.

Mr. SYNAR. One final question, Mr. Chairman, if I may. Last week, I asked Tony Canales and some other witnesses this basic question, and I would ask you the same question and ask that you respond as best you can.

To the best of your knowledge, are we talking about a limited network or fraternity-type ripoff of the American public through the reseller operations, or are we talking about almost an industrywide situation, encompassing 50 States, with all major oil companies potentially involved, as well as all resellers in the present market today?

Mr. KEENEY. Mr. Synar, all I can answer is, based on our experience with these cases, and the cases have been primarily resellers, and the majors that have been involved to a very limited extent. I don't think I am a good person to try and answer that question. Based upon our experience, it seems to be a reseller problem with a lot of resellers, the resellers multiplying by leaps and bounds as the regulations took effect.

Mr. SYNAR. Mr. Canales came in here last Friday and made two statements. (1), That the major oil companies were involved to a large degree, and, (2) it is clear from looking at the typical flow of the chart that the refinery which is a major oil company and the retail consumer have to be involved.

Mr. KEENEY. Conoco is a major; there is no question about that. I didn't exclude the majors. I said based on our experience it is primarily a reseller situation with the number of resellers proliferating like mad. There are majors who have turned up in these investigations.

Mr. SYNAR. Let me ask you this, then: Is it possible for this reselling action and increase in the price to exist without the cooperation of the major oil companies?

Mr. KEENEY. I don't think I can answer that, Mr. Synar.

Mr. SYNAR. You can't answer that; that the producer of the oil and the refiner of the oil, which are purchasing the oil and, increasing the prices are not involved?

Mr. DINGELL. Would the gentleman yield? Are you familiar with the allocation regulations and with the provisions of the Energy Policy and Conservation Act of 1975, which deals with this particular matter?

Mr. KEENEY. I am generally familiar with it.

Mr. DINGELL. The Energy Policy Conservation Act requires that there be a supplier-purchaser relationship between anybody who sells crude oil and the refiner or the major purchaser and the minute that is disregarded and other purchasers are inserted into the chain, they are intruding into that mandatory supplier-purchaser relationship, are they not?

Mr. KEENEY. Yes, sir.

Mr. DINGELL. If the allocation specifically defines who shall be the seller and purchaser of crude, and if it specifically defined who shall be the seller of refined products, and the purchaser thereof, then anybody who enters into that chain enters into it by sufferance of the parties thereto, does he not?

Mr. KEENEY. I am going to refer to Mr. Fishkin.

Mr. FISHKIN. Often in these cases the chain starts after the first sale from the refiner to his traditional customer.

Mr. DINGELL. I don't quarrel with that, but isn't what I said true?

Mr. FISHKIN. It could be.

Mr. DINGELL. Not could be, is it true?

Mr. SYNAR. Isn't there a front-end daisy chain?

Mr. FISHKIN. There is sometimes a daisy chain at the front end. But there is no reason to assume——

Mr. DINGELL. The allocation regulations define who shall be the seller and who shall be the purchaser. Anybody who intrudes between the seller and purchaser, either as regards crude or product, does so by the sufferance of either one or both parties, and I assume by both; isn't that true?

Mr. FISHKIN. I would assume so.

Mr. DINGELL. That would mean in most instances without the sufferance or concurrence or active participation—and I am not sure which is the right word—of one or both of the parties, the intruder who becomes the daisy chain could not be there, could he?

Mr. FISHKIN. It would not necessarily have to be both.

Mr. DINGELL. No, but it could be both, and it very probably would be both, would it not? Because either of them could come to Washington, or go to the DOE and say there is somebody here that is intruding into my relationship with the person from whom I am supposed to get allocated crude or allocated product or the person whom I am supposed to sell allocated crude or product. Isn't that so?

Mr. FISHKIN. The cases we have seen have been situations where the intrusion is after the fact.

Mr. DINGELL. That is a good answer, but it is not the question.

Mr. FISHKIN. Anything is possible, Mr. Chairman.

Mr. DINGELL. Madam Reporter, would you read that back so the witness can understand the question and try to respond.

[The record was read by the reporter.]

Mr. FISHKIN. Those are not the situations we are finding, Mr. Chairman.

Mr. SYNAR. I yield, Mr. Chairman.

Mr. CONYERS. The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. Thank you, Mr. Chairman. I would like to say from what my experience has been with this so far, Mr. Keeney, it

appears to me if Mr. Canales cannot come forward—and Mr. Canales had not seen 60 Minutes—that that case would be left sitting at the Department of Justice for another 3 or 4 or 5 months, and Conoco would never have been done anything with because the statute of limitation would expire. Do you disagree with that statement?

Mr. FISHKIN. Yes, sir.

Mr. VOLKMER. Tell me why.

Mr. FISHKIN. You are talking about two different situations. Mr. Canales was talking about the crude oil reseller cases that were in the works, in the pipeline, in DOE, at a time when he saw something on television referring to Houston oil men. He contacted a friend in DOE and found out they were in the pipeline. Those cases would have come across regardless. The *Conoco* case was already referred at that time.

Mr. VOLKMER. The *Conoco* case was referred where at that time?

Mr. FISHKIN. To the Department of Justice.

Mr. VOLKMER. Yes; but the Department of Justice was sitting on it.

Mr. FISHKIN. That is correct.

Mr. VOLKMER. If Mr. Canales had not come forward and started moving things, the Department of Justice would still be sitting on it.

Mr. FISHKIN. That is not true, either.

Mr. VOLKMER. Tell me how long you were sitting on it, because you had already been sitting on it 9 months. How much longer would you have been sitting on it?

Mr. FISHKIN. In the beginning of 1978——

Mr. VOLKMER. No; how much longer? You sat on it in March. How much longer?

Mr. FISHKIN. It would have gone out at that time. It was at that time we had specifically assigned one individual responsible for all of these cases. All of these cases were being gotten together; that is why the case went out in March, not because of anything Mr. Canales did.

Mr. VOLKMER. Canales had nothing to do with that case at all, bringing the *Conoco* case up and getting it referred to. You are telling me Canales' input had nothing to do with that; is that correct?

Mr. KEENEY. If I understand what he is saying, Canales had nothing to do with getting it sent to Texas to him. He had a lot to do with developing the case, Mr. Volkmer.

Mr. VOLKMER. You are saying it would have been sent, anyway?

Mr. FISHKIN. That is correct.

Mr. VOLKMER. What during that period prevented somebody from even examining the file and determining whether or not it could have been moved on faster because of the limitation period.

Mr. FISHKIN. Nothing, to my knowledge.

Mr. VOLKMER. It would have taken part of a month?

Mr. FISHKIN. Considerably more than that.

Mr. VOLKMER. Just to review the file and determine what events could have occurred.

Mr. FISHKIN. In the first instance, Congressman, if you look at the Conoco indictment, itself, which the committee has a copy of,

the primary charge, the felony charge, has a statute date of November 29, 1973, not August 1973, and the statute date was considerably in advance of that because there were payments back to Conoco until almost the end of 1974. In any event, my knowledge of the situation was that around January, I was appointed to look after all these cases, sometime in January, and I got them together. I found Conoco, talked to the individual who had it, determined where it should go and sent it.

Mr. VOLKMER. All right. The recent indictment that was dismissed there——

Mr. KEENEY. I am sorry?

Mr. VOLKMER. The recent indictment that had been dismissed——

Mr. KEENEY. Yes, sir; there was a recent indictment dismissed.

Mr. VOLKMER. Did you handle that originally?

Mr. KEENEY. We reviewed the indictment. Mr. Canales sent it up; we reviewed it and went over the indictment.

Mr. VOLKMER. You saw nothing wrong with that, did you?

Mr. KEENEY. That is right.

Mr. VOLKMER. You cannot understand why the judge dismissed it, can you?

Mr. KEENEY. I cannot.

Mr. VOLKMER. Neither can I. I cannot understand it at all. That will be appealed?

Mr. KEENEY. That will be appealed.

Mr. VOLKMER. As I understand it, the Federal Bureau of Investigation doesn't enter into a case until DOE certifies it; is that correct?

Mr. MULLEN. We receive the case from the Department of Justice.

Mr. VOLKMER. The Department of Justice doesn't get it until DOE gives it to them?

Mr. MULLEN. That is correct.

Mr. VOLKMER. You don't start looking at it until that happens?

Mr. MULLEN. That is correct.

Mr. VOLKMER. As I understand it from DOE, they may have a group established to look into the reseller problem; they have 60 or any number of accountants looking at it. The gentleman that is in charge of it is an expert in civil accounting and civil procedures, not in criminal?

Mr. MULLEN. I am not aware of this particular group, Congressman.

Mr. VOLKMER. That is what I was afraid of. I don't think anybody else is, either.

Now, I would like to point out to you what bothers me—and I am sure bothers maybe McNeff and other people—is that things like happened in the *Conoco* case, things that are going on right now. If a crime has been committed and there is reason to believe a crime has been committed, does the FBI have to wait for somebody to tell you to go look at it?

Mr. MULLEN. Somebody has to tell us, Mr. Congressman. We must have a predication for investigation. We are not out policing the industry, reviewing large volumes of records. Somebody has to

tell us, yes, a crime has been committed, before we can conduct an investigation. Somebody has to tell us.

Mr. VOLKMER. Even though you have reason to believe a crime has been committed?

Mr. MULLEN. No. If we have reason to believe, but then somebody would have to tell us so we would have reason to believe. We have to have some predication. Somebody has to come to us and tell us a crime has been committed. Then we will proceed. Should it come directly to the FBI from the Department of Energy, if this is what you are getting at, we would accept the investigation.

Mr. VOLKMER. I am getting at something a little more obvious that bothers me. It is a little more obvious. Maybe I am wrong, OK; maybe it really isn't obvious. Maybe I am looking at it the wrong way and you can clear it up for me.

Back in 1973, you only had so many resellers.

Mr. MULLEN. That is right.

Mr. VOLKMER. Now we have hundreds more, for no good purpose.

Mr. MULLEN. That is correct.

Mr. VOLKMER. There is no reason for them to be in the chain.

Mr. MULLEN. Fraud most likely.

Mr. VOLKMER. If that is true, why don't you go get them?

Mr. MULLEN. We have to have someone tell us they are violating the law. We can't go out and police an industry.

Mr. VOLKMER. Banks are being robbed all over the country; would you go look into it?

Mr. MULLEN. When a bank is robbed, we would respond to a robbery. When there is a violation, we will respond to that violation.

Mr. VOLKMER. How much do you have to have to say there has been a violation——

Mr. MULLEN. Somebody walks in the door of an FBI office and says, "hey, over here, they are committing fraud;" we will look into it immediately.

Mr. VOLKMER. You can't look at records; you will refuse to look at records——

Mr. MULLEN. On what basis? The question is why. If someone says there is fraud involved, we will look at them. We can't go out and say, we think there is fraud there, give me all your records. It doesn't work that way. We have to get subpenas; we have to consult with the Department of Justice, with the U.S. attorney, to determine whether or not he will prosecute the case. There is a procedure, Mr. Congressman. We cannot go out arbitrarily and say give us your records. We have to have a predication.

Mr. VOLKMER. The Department of Energy can do that.

Mr. MULLEN. That is their job. They are auditing, and when they detect a criminal violation, they refer it, and we immediately look into it. We haven't delayed on any of these investigations.

Mr. VOLKMER. I wonder if one of your people would go in and audit.

Mr. MULLEN. As a task force?

Mr. VOLKMER. Could you do that? Is there a law against it?

Mr. HENEHAN. We couldn't do that. We don't have the resources to participate in detection activities or in auditing activities. We have had an allegation in this case. Mr. McNeff has come forward

and made an allegation. We have evaluated the information he has given us, and we have made a determination that there is no justification for us to go forward, based on the information he has given us.

Mr. SYNAR. What about Mr. Hallman, who testified? He worked for the Department of Energy, and he sat here last Friday. We are not talking about Mr. McNeff; we are talking about Mr. Hallman, who sat here last Friday and said that to the best of his knowledge there may be a situation where there is collusion between the Justice Department and major oil companies.

Mr. HENEHAN. I think there is one point I would like to make with regard to the entry of the FBI. We have responsibility after the Department of Energy. The Department of Energy is responsible for the monitoring of the activities in the energy field. They are to come forward when they detect a criminal violation. Now, if we get information from another source outside of the Department of Energy—a woman in Florida walking into the U.S. attorney office—a case will be opened. But we have to rely on the Department of Energy to police the field, to handle the detection, the auditing activities. The FBI does not have the resources to do that.

Mr. SYNAR. Wait a minute, because I want to pursue this. You say you do not have the personnel, you do not have the accountants, to put in the field on this problem. That is what you are telling us.

Mr. MULLEN. When it reaches the level of criminality. We have adequate resources to proceed when there is a criminal violation. Policing the industry, that is DOE; that is their job to detect the violation immediately.

Mr. SYNAR. But the problem is that DOE personnel are not, as I understand the testimony—perhaps we can get somebody from DOE to tell me different—they are not experienced in the field of criminal investigation.

Mr. MULLEN. But with knowledge of the DOE regulations, they should recognize the violation when they see it. To proceed with the investigation and obtain the evidence necessary to proceed in court requires a trained investigator and accountant. An auditor and investigator can be two different things. They should be able to recognize the violation and thereafter refer it to the Department of Justice so we can proceed with the criminal investigation.

Mr. VOLKMER. I yield to the gentleman from Wisconsin. I think my time is up. I will yield for one question.

Mr. SENSENBRENNER. Have any of you gentlemen received any evidence of criminality directly from the Department of Energy?

Mr. CARO. Department of Energy personnel?

Mr. SENSENBRENNER. Yes, sir.

Mr. CARO. Yes.

Mr. SENSENBRENNER. You have?

Mr. CARO. Yes, sir.

Mr. SENSENBRENNER. How much?

Mr. CARO. I made reference to my interview with Mr. McNeff.

Mr. SENSENBRENNER. Did you receive any information from the Department of Energy personnel aside from Mr. McNeff?

Mr. CARO. Others have; yes, sir. I am aware of it. I did not personally get involved, but agents in the Houston task forces have

received additional information from the Department of Energy personnel.

Mr. SENSENBRENNER. To your knowledge, have any of the FBI agents interviewed the Department of Energy auditors on an issue, in other words, an initial complaint, without having to go through this paper trail to the auditor, to main Energy, to main Justice, down to the field and then to the FBI?

Mr. CARO. Congressman, what you are referring to in this instance is an oil referral investigation. We are talking about a potential bribery case or obstruction of justice investigation. There is no referral to the Department of Justice. We, on our own, the FBI, opens and investigates, conducts the investigation in concert with the U.S. attorney and makes a determination whether or not there is a prosecution. There is no referral to the Department of Justice in a bribery or corruption type of investigation.

Mr. CONYERS. Where do you get the lead from, since he says we don't move unless somebody complains?

Mr. MULLEN. As I said earlier, Mr. Congressman, I think the type of investigation you are referring to is the so-called spinoff. If we are into one oil company, and as a result of our investigation we determine another violation, we immediately proceed with those investigations. We wouldn't ignore it, waiting for someone to tell us. If we detect it in one of our ongoing investigations, we do open an investigation in that instance.

Mr. VOLKMER. Mr. Chairman, could I ask one last question.

Mr. Keeney, have you ever made any statements to the Department of Energy, including Mr. Coleman, or any subordinate of his, in regard to Mr. McNeff?

Mr. KEENEY. I am trying to think, Mr. Volkmer, whether I ever discussed it with Coleman or Bloom.

Mr. VOLKMER. Anybody in the Department of Energy?

Mr. KEENEY. I don't remember offhand. I discussed it with my colleagues here in the FBI, in the Department, and with Mr. Canales. I don't recall specifically. I may have.

Mr. VOLKMER. You have never discussed McNeff with anybody over in the Department of Energy?

Mr. KEENEY. I say I have no recollection of having discussed it at this moment. I have discussed it internally in the Department of Justice.

Mr. CONYERS. You haven't talked to McNeff, have you?

Mr. KEENEY. No, sir, I have not.

Mr. CONYERS. Mr. Fishkin, you have not talked to him?

Mr. FISHKIN. No, sir.

Mr. CONYERS. Mr. Mullen, you haven't talked to him, have you?

Mr. MULLEN. No, sir.

Mr. CONYERS. Mr. Caro, you haven't talked to him, have you?

Mr. CARO. Yes, I have.

Mr. CONYERS. Mr. Henehan, have you talked to him.

Mr. HENEHAN. No, I haven't.

Mr. KEENEY. One of the attorneys in the fraud unit has talked to Mr. McNeff.

Mr. CONYERS. Which one?

Mr. KEENEY. His name is Sauber.

Mr. CONYERS. Is he still there?

Mr. KEENEY. Yes, sir.

Mr. CONYERS. The gentleman from Texas, Mr. Gramm.

Mr. GRAMM. Thank you, Mr. Chairman.

I would like to begin, Mr. Keeney, by asking you a question. It seems to me a relevant question that everybody on this panel, in fact the American people in general, want to know is, what are we talking about in terms of a criminal potential here, of taking a regulatory system that rightly or wrongly was aimed at protecting the consumer, and had in the process become a haven for criminals who rip off the producer by buying old oil, and rip off the consumer by selling it to the consumer as new oil through the refinery process.

Have you come up with any kind of methodology or has there been an attempt in the Justice Department or DOE so that you have to come up with a methodology of estimating a ball park figure as to how much of a ripoff we are talking about.

Mr. KEENEY. No, sir, I don't. The only experience we have had is the cases we filed, such as *Conoco* and some of the others, where we allege a substantial ripoff or fraud.

Mr. GRAMM. Well, let me suggest to you that it seems to me this is a fundamental problem in your procedure. I think there are methodological approaches that can be used to estimate the potential aggregate volume of the crime.

Now, they are not going to tell you who committed the crime, but let me just suggest to you—and I have asked the Department of Energy at least on those daisy chains that occurred before the refinery—to collect this data and supply it to me, and if you don't ask them for it, I will be glad to share it with you when I get it.

We have data on production, as to whether it is old oil or new oil, or the various classifications it falls under because of Government regulation. We keep very strict data on that. We license imports.

So, it is simply a statistical problem to find out the classification, the aggregate value of oil being produced in the United States for domestic refinement, and oil being imported for that purpose.

So we can calculate that dollar figure on an annual basis or quarterly basis. We can also, because of records kept by refineries, aggregate the amount that they are paying for the oil that is going into the refinement process.

Now, it seems to me that it is a fairly simple statistical problem to take the aggregate that is being paid by the refiner, net out the transportation costs, and determine to what extent crooks have jumped into the cycle, buying old oil and reselling it through some daisy chain process to refiners as new oil.

I can understand having problems with enough personnel, but I certainly cannot understand not trying to get some handle on how big a problem we are dealing with. It seems to me that could be done.

Mr. KEENEY. Mr. Congressman, that is the function of DOE. Their auditors look at all these things, and then they cull out matters that have criminal potential and refer it to us. The fact that it is $\$x$ billion or $\$y$ billion is really in the overall, is really not relevant to particular criminal prosecutions which we might undertake.

Mr. GRAMM. It seems to me that it is. What we are assessing is how much money we want to put in trying to put crooks in jail. It makes a very big difference whether we are talking about $1 billion or $10 billion or $20 billion.

It seems to me that there are statistics available that could be used by those familiar with them to give us some indication of how big this crime is. I think it is very important that we know that if we are going to make any kind of intelligent decisions about it.

Mr. KEENEY. I don't think that we are the people to provide that for you, Mr. Congressman.

Mr. GRAMM. But so far as you know, no one in the Justice Department—and if DOE has tried to calculate these ball park figures, they have not shared them with you, is that correct?

Mr. KEENEY. If they have made them available to the Department I am not aware of them, Mr. Congressman.

Mr. GRAMM. OK. Let me follow up with the next question.

It seems to me that, again, it is a matter of public record, as to the chain processes, at least in the aggregate, in terms of resellers that existed before we went under price control, and the chain process as it exists today.

As far as you are aware, have there been any efforts to determine what has happened to the number of resellers in the marketplace? Have we determined in the normal train of transactions some mean transaction where the number of resellers has increased and, if so, by how many transactions?

Mr. KEENEY. We have seen—I have seen some figures with respect to the proliferation of resellers, but I could not give them to you offhand. I don't know how accurate they are. We have run into, I think, as many as 25 resellers in some of our investigations.

Mr. GRAMM. Let me ask one other question, since my time is about to expire.

Our President has taken action to begin the process through September 30, 1981 to deregulate crude petroleum. That is going to eliminate over that period the problem we face in trying to price a homogeneous product at different prices.

Will that action in your mind eliminate the great bulk of the daisy chain problem from that date on, whereby the criminal element has taken advantage of our petroleum situation?

Obviously crimes have already been committed. Those crimes need to be prosecuted, and those crimes exist. I am talking about once the deregulation is complete, from what you have been able to ascertain in investigating criminal procedures, and criminal activities, will deregulation eliminate those, or is this going to be a continuing problem, even after deregulation, that will remain at roughly the same level?

Mr. FISHKIN. I think basically, Congressman, the problem is a problem of a shortage market, where there is less product to go around, and that enhances or encourages the reselling. You also have a significant spot market right now which is enhancing reselling, and which will probably continue.

Mr. GRAMM. Mr. Mullen, would you like to answer that from the FBI's viewpoint? Do you see most of the crime occurring by converting old oil into new, by paper shuffling, and do you believe that

deregulation, where all the oil and the initial production level is selling at the same price, will eliminate most of this crime?

Mr. MULLEN. I couldn't comment, I couldn't say for sure it would eliminate most of the crime. As long as there is a shortage, and there is money to be made, we will have fraud. That is my opinion.

Mr. GRAMM. Thank you, Mr. Chairman.

Mr. CONYERS. The gentleman from Texas, Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I appreciate you giving the members of the Energy Committee an opportunity to sit in with you on this session. I am one party that is sitting in that hasn't decided that everybody is guilty.

You know, as I listen to everybody on the other side of the aisle, all I could feel like is that I would hate to see them as the jury because their mind is made up when they came in.

I want to tell you basically I am from Texas. I am about like a guy from Kansas on wheat, or if you are from Pennsylvania on steel, or lobsters from Maine. Each of us has a background.

Well, in Texas oil is the biggest industry. Naturally I think if something were serious I would have heard about this.

This thing has gone on for 5 years. I have served on every energy committee up here, every one of them. For the past 4years I was the ranking member on the Oversight and Investigations Subcommittee.

The chairman had half of his investigations on oil. We have done nothing but discuss oil, investigate it. On this reseller business I have never heard the subject until it really came up just lately. I am talking about all of these crooks that are involved and so forth.

As many people as I know in the oil business, I go home every weekend, I would have seen them in Washington, I would have seen them in Texas.

I want to ask this question first. You get the feeling as we listen to all this that there has been all kinds of pressure on here. I would like to ask the FBI and the Justice Department, has there been any congressional pressure of any time for you to back off on this case?

Mr. MULLEN. I will answer for the FBI, Mr. Congressman. No pressure at all to back off on any case, from anybody.

Mr. KEENEY. The same answer for the Justice Department.

Mr. COLLINS. You men are dedicated civil servants. You are neither one on a political basis, are you? Aren't you career people?

Mr. MULLEN. Yes, sir.

Mr. KEENEY. Yes, sir.

Mr. COLLINS. I have heard all of this testimony, and all this shouting going on, as we go through these hearings. You keep getting the idea that some way or another that something has come up.

I will tell you what has come up. We have an oil shortage in the country, and the politicians are trying to find some albatross here, something to hang on it. I want to give you one other example.

The chairman of our oversight committee decided that the oil companies had been withholding gas down there off the shore of the gulf coast. I don't know whether it got to you or not.

But we had every oil company that had any kind of data haul all of that information over here, and we put it in a safe. They brought it in armored cars. It was worth millions of dollars.

They searched it for 1 solid year, and they found out there hadn't been anything illegal done, there hadn't been any withholding of information. Then we had to force the chairman of that committee to divulge the fact that they hadn't found anything.

Now, I don't know what is involved in this. I understand that basically you are dealing with a situation where there has been ambiguous regulations. Were any of you here last week when the head of the General Accounting Office was here?

Mr. KEENEY. No, sir.

Mr. MULLEN. No, sir.

Mr. COLLINS. He came in, and this is another career man. He told us that they have had a difficult time determining exactly, when they did an audit, determining just what the regulations actually were because as I understood him, he said that resellers didn't have a base.

Is that right, that the resellers, as the Government and the Department of Energy established the bases, that they did not have a base that they were working against?

Mr. FISHKIN. That is not true, Congressman.

Mr. COLLINS. Did they have a base?

Mr. FISHKIN. Yes, sir.

Mr. COLLINS. Do you know what the base was?

Mr. FISHKIN. I think it would carry from reseller to reseller, dependent upon their class of purchases, the date they entered into business, a number of variables.

Mr. COLLINS. Now, which department are you from?

Mr. FISHKIN. Justice.

Mr. COLLINS. You are familiar with this. Do you know exactly in each case where a reseller picked it up, could you define exactly what his basis was, and whether he had done something illegal?

Mr. FISHKIN. It could be done by a thorough audit of his books.

Mr. COLLINS. By what?

Mr. FISHKIN. By a thorough audit of his books and records.

Mr. COLLINS. Well, now, the General Accounting Office went down there and did an audit. They were having a difficult time finding out exactly what this reseller had done. Who were these resellers? Have you worked on this reseller business?

Mr. FISHKIN. Yes, sir.

Mr. COLLINS. Are they individuals, or are they companies?

Mr. FISHKIN. They cover the entire gamut, Congressman. They are individuals, they are companies, they are large corporations.

Mr. COLLINS. And you have investigated. You knew what the case was then on what their base was, and you have done audits yourself?

Mr. FISHKIN. No, sir, what I am saying is it is a determinable figure for a transaction.

Mr. COLLINS. What has been the difficulty then in determining that figure, if it were determinable?

Mr. FISHKIN. The difficulty, Congressman, in the reseller cases is that because there is a reseller does not mean that a crime has been committed. In order for there to be a crime, we have to show

that there is a lack of an arm's length transaction involved. The reseller has no function in the transaction.

Mr. COLLINS. Let's repeat that again, now. He has to do what to make it a crime?

Mr. FISHKIN. Have no reasonable function in the transaction, and not be involved in an arm's length buy-sale situation.

Mr. COLLINS. What you are saying, then, he could give any kind of a markup he wanted to it, is that correct.

Mr. FISHKIN. No, sir.

Mr. COLLINS. What is the arm's length got to do with the function?

Mr. FISHKIN. Well, there are two different levels, Congressman. If you are talking about a simple civil violation of the Department of Energy regulations, which would be a charge in excess of his maximum lawful selling price, that is one thing. If you are talking about a criminal felony, like the daisy chain cases that Congressman——

Mr. COLLINS. That is what we are primarily concerned with here.

Mr. FISHKIN. Those generally involve a situation where the reseller, when he comes into the deal, already knows what he is going to buy it for, what he is going to sell it for, who he is going to sell it to, who he is going to buy it from, and who he is going to split the profit with. That is not an arm's-length transaction.

Mr. COLLINS. That is what we have been doing so much talking about right here, and that is what concerns my colleagues in Congress. What factual information did you receive on that for these people that you have been charged?

Mr. FISHKIN. It differs from case to case, Congressman.

Mr. COLLINS. Have you had any cases where you had that information, where you had a conviction?

Mr. FISHKIN. Yes, sir.

Mr. COLLINS. Have you found any reluctance to bring these cases up? Have you had any kind of pressure with the cases where you were concerned?

Mr. FISHKIN. None whatsoever.

Mr. COLLINS. Did you have the Department of Energy ask you to back off of these cases?

Mr. FISHKIN. The Department of Energy has been very anxious to push them.

Mr. COLLINS. As we keep talking about these things over and over and over in this hearing, and as I listen, I wonder who has been reluctant to bring them up. The FBI isn't, the Justice Department isn't, the Energy Department isn't.

All we have had is one or two—and I read the testimony of the gentleman from the Department of Energy, and I heard it discussed as gut feelings. There hasn't been any evidence that has been brought in of people that have been reluctant to bring it up.

As you know, what happened is lately the price of gasoline has gone up. That is the purpose of this hearing today, is to find out how it has gone up. The reason it has gone up, this country is importing half of its oil from abroad.

I also like to remind people 5 years ago we were importing $3 billion worth, and today we are importing $42 billion of our oil from abroad. Congress is trying to find a scapegoat.

Do you know any way they could rewrite these regulations that would help? Is it the fault of the regulations, is it the fault of the law?

Mr. KEENEY. I guess all we could say about that, Mr. Collins, is that the regulations give an opportunity for people who have a bent towards fraud to engage in the fraud. There is a lot of money involved. Where there is a lot of money, people do illegal things.

Mr. COLLINS. I think that sums it up pretty well right there.

Mr. VOLKMER. Would the gentleman yield just a minute?

Mr. COLLINS. Yes.

Mr. VOLKMER. You know, there is a guy in Texas by the name of Albert Alkek. I am sure the gentleman from Texas has heard of him.

Mr. COLLINS. I really have not heard of him.

Mr. VOLKMER. I haven't heard of too many people who have heard of him. Anyway, he has paid a civil penalty in a case just this year of $3,240,000. He got out completely of the *Conoco* case, as I understand. He was not indicted in that case.

It is unknown to me how much he got out of there. So there is a little bit of money in here.

Mr. COLLINS. Let me ask the gentleman something. Were you the gentleman questioned whether we ought to investigate the Federal judge or not?

Mr. VOLKMER. I say that I am anxious to look into his background because I have read this indictment and I just asked the gentleman also his opinion. I find nothing wrong with that indictment. The judge threw it out. I don't know why.

Mr. COLLINS. I will tell you, we are very penetrating when we start questioning as to Federal judges. I can see why you gentlemen would also be in the same approach. But I agree with what you started with. You ought to stay with the facts.

If anybody anywhere is taking any money illegally and, as he brought out, it is the way they have done it, their intentions and all that, we pursue it.

But the thing you have said which impresses me the most is you have had no pressure from Congress, you have had no pressure from the Justice Department, from the Department of Energy, or from the administration. You have acted independently.

I hope that these hearings, with all the pressure that they try to generate, won't cause you to lose your balance.

Thank you, Mr. Chairman.

Mr. DINGELL. The Chair thanks the gentleman.

The gentleman from Missouri.

Mr. VOLKMER. Yes; I would like to comment, along the lines of the gentleman from Texas.

What bothers me in this is that the procedure that seems to be is a time-consuming procedure. Let's review it again.

First, I would like to digress just a minute, if I may, Mr. Chairman, to point this out. The Department of Justice refuses to enter into any type of a written agreement with the Department of Energy on methodology in handling these cases. True or not true?

Mr. KEENEY. True.

Mr. VOLKMER. That bothers me. Why not?

Mr. KEENEY. Because the area is too complex, Mr. Volkmer. If we tried to draw guidelines in this area, we would miss things going through the cracks.

We have a satisfactory relationship where anytime that the DOE people think they might have any indication of criminality, they talk to us. It is working right now. We would like to leave it that way.

If you draw precise guidelines, you are going to find situations that don't fit within those guidelines. I think we have something going now that doesn't need fixing at the moment. My judgment is that we should keep it that way.

Mr. VOLKMER. If you don't mind, I would like to go back. I think that may be wrong. I think you could work out one even if you didn't sign it. That is my impression, anyway. You could work out a guideline, a structure.

The second thing is—right now what we have is a group from DOE that are auditors, accountants, and they are auditing the resellers.

Mr. KEENEY. Yes, sir.

Mr. VOLKMER. We understand that.

Mr. KEENEY. Yes, sir.

Mr. VOLKMER. So everything is based upon what they do.

Mr. KEENEY. Yes, sir.

Mr. VOLKMER. That is going to be time consuming; is it not?

Mr. KEENEY. Yes, but they are doing a double function. They are doing an audit which has civil and administrative ramifications.

Mr. VOLKMER. No. This is the criminal part, as I understand it, from DOE's testimony. Maybe I am wrong.

Mr. KEENEY. It is civilian criminal, Mr. Volkmer.

Mr. VOLKMER. All right, fine. Now, after that is done, and that is referred then, if they find a criminal, that goes up to somebody at DOE, undoubtedly. They have to review it. It has to come to you. You have to review it, and then it has to be referred out to a U.S. attorney. Is that correct?

Mr. KEENEY. We don't always refer them out, Congressman. We review some of these and just decline right in the Department, if we don't think it has sufficient criminal potential.

Mr. VOLKMER. I know; but let's assume this one does.

Mr. KEENEY. Yes, sir. Then it goes out to the U.S. attorney.

Mr. VOLKMER. The U.S. attorney looks it over, and decides it needs further investigation. That is when it goes to the FBI?

Mr. KEENEY. Yes, sir.

Mr. VOLKMER. And not before. That is the first time the FBI gets into it; is that right?

Mr. KEENEY. That is right.

Mr. VOLKMER. It doesn't bother you a bit about the time consumption there?

Mr. KEENEY. There is a time lag, but I don't think it is that substantial, Mr. Volkmer. I think Mr. Fishkin can probably give you an idea of how much time is actually involved in this process.

Mr. VOLKMER. Yes. Somebody tell me about it.

Mr. FISHKIN. Congressman, in the average referral that we get, we know the referral is coming before we get it. It stays in our office for approximately 1 week, if that long. By the time we make

a determination, the file is hand delivered, usually by DOE field to an appropriate U.S. attorney.

I might add that 30 of the 39 cases that are currently active are being handled by our office independently by our office, jointly with the U.S. attorney. So from the day it gets to our office, we are involved in the case.

We also make contact with the FBI immediately, advise the FBI that the matter is coming, and set up their manpower ability to respond.

Mr. VOLKMER. Now, how many cases do you anticipate will be forthcoming from the group reseller investigation of DOE?

Mr. FISHKIN. I can't answer that. It depends on the merit of each case.

Mr. VOLKMER. All right. So you have no idea how many cases may be coming to you within the next several months from that source?

Mr. FISHKIN. We know that there are potentially 70 cases in the pipeline right now, of which some of them are crude oil reseller cases. We just have gotten a number of crude oil reseller cases which have violations from 1968—I am sorry, 1978 and back.

So that the original 1973 cases, the original embargo cases are now pretty much cleaned out. The determination has been made either that they can be or cannot be prosecuted, and we are now starting to get current matters.

Mr. VOLKMER. How many personnel do you have working with you in Justice on these, in reviewing them and referring or declining?

Mr. FISHKIN. There are nine attorneys in the energy unit who are—in Justice, seven in Washington, one in Tampa, one in Houston—all of whom are involved in reviewing, all of whom are involved on a daily basis in the cases themselves, on an active basis.

Mr. VOLKMER. That is just my point. Now, what do you anticipate as an increase in the staff in the next 6 months?

Mr. FISHKIN. As we get more and more cases, we get more and more attorneys. So far we have always been able to get sufficient manpower to handle all of the cases that we are getting.

Mr. KEENEY. Mr. Volkmer, I might add here there has been some discussion by my colleague Mr. Mullen about the energy cases, the coal cases. When we are talking about the energy unit and the energy cases we are talking about primarily the gas and oil cases.

The frauds in the coalfields are handled separately, and we have additional personnel on those.

Mr. VOLKMER. That is separate from the oil.

Mr. KEENEY. Yes, sir.

Mr. VOLKMER. When you are talking about the nine people, seven plus one plus one, you are just talking about oil?

Mr. FISHKIN. Oil and natural gas. Anything coming out of the Department of Energy.

Mr. VOLKMER. Thank you.

Mr. SENSENBRENNER. In response to some questions by the gentleman from Texas, Mr. Collins, the representative of the General Accounting Office last Wednesday said that the Department of Energy pricing guidelines were very confusing and misleading.

Do either of you gentlemen from the Department of Justice determine that the requisite criminal intent was not present in any of the cases that have been referred to you, due to misleading or ambiguous guidelines of the Department of Energy?

Mr. KEENEY. I might just answer that by saying, Mr. Sensenbrenner, basically the criminal prosecutions that we brought have not been based on violations of the regs. They have been based upon fraudulent activity, where there were allegations of fraud other than violations of regs.

Mr. SENSENBRENNER. So we are talking about a violation of an existing antifraud law that applies outside the energy field, as well as within the energy field.

Mr. KEENEY. Basically, yes, sir. Kickbacks and so forth.

Mr. SENSENBRENNER. Thank you.

I yield back the balance of my time.

Mr. DINGELL. Mr. Caro, you handled the *Conoco* case, did you, in Houston?

Mr. CARO. Agents in the Houston office assisted the U.S. attorney in the *Conoco* case, yes.

Mr. DINGELL. You were in charge of that investigation of that matter?

Mr. CARO. Yes, sir.

Mr. DINGELL. Have you ever met Mr. Barrett, Mr. Stockton, or the members of the staff of the Subcommittee on Energy and Power?

Mr. CARO. No; I have not.

Mr. DINGELL. When you were down in Texas, handling the Conoco matter, Mr. Barrett and Mr. Stockton were sent down by me to review the files on the *Conoco* matter, and those files were removed to another place after discussions with Mr. McNeff, is that right, between you and Mr. McNeff?

Mr. CARO. No; you mean was I involved in the decisionmaking—making a determination to move the Conoco files?

Mr. DINGELL. That is right.

Mr. CARO. No, sir; I did not get involved in that.

Mr. DINGELL. Well, it just so happens that both Mr. Stockton and Mr. Barrett were sent by me down there to review those files, and those files were removed about 2 hours before they arrived in Houston, so that they could not review them.

Can you tell me who it was that directed that those files be removed?

Mr. CARO. No, sir; I am not aware of that fact situation.

Mr. DINGELL. Who was in charge of the files at that time?

Mr. CARO. The Department of Energy.

Mr. DINGELL. The Department of Energy was in charge?

Mr. CARO. You are talking about——

Mr. DINGELL. I am talking about the locked file cabinets that were foreclosed to Mr. Barrett and Mr. Stockton.

Mr. CARO. I am sorry. I am not aware of this situation at all.

Mr. DINGELL. You are unaware. Who would be aware of this situation?

Mr. KEENEY. Mr. Chairman, the whole chronology of that is set forth in the letter dated November 9, 1978, from the Department of Justice to you.

Mr. DINGELL. To me.

Mr. VOLKMER. If the gentleman would yield, perhaps Mr. Keeney could tell us what it is, because he seems to have the letter. I have never seen it.

Mr. KEENEY. Well, it was the direction of Mr. Canales, the U.S. attorney to the FBI, to pick up the files and bring them in closer proximity to his, Mr. Canales' office, so that he and the FBI and the grand jury could have more ready access.

Mr. DINGELL. You are saying Mr. Canales directed that they be taken to close proximity to his office?

Mr. KEENEY. Maintain them in the FBI office is actually what it was, so that they would have access. I will read the portions of the letter, Mr. Dingell. I don't really know anything about this, except what is reflected in this letter which was prepared by the Department in conjunction with Mr. Canales.

Mr. BARRETT. The files were in the office of the DOE down in Houston for some 9 or more months, actually from March 1977. They were moved out in the late afternoon of June 14, 1978, somewhere between 3 and 4 in the afternoon. We got into town about 6 o'clock.

Mr. McNeff had that morning spoken to Mr. Caro, I believe, and told him that we were coming to Houston to look into a number of matters.

Mr. DINGELL. At that point, did Mr. McNeff advise you that our staff investigators were coming down there at that time, Mr. Caro? You are under oath.

Mr. CARO. I am aware of that, Mr. Congressman.

I don't recall. But it is very possible Mr. McNeff mentioned it. Mr. McNeff mentioned on several occasions that your representatives were coming to Houston, Tex.

Mr. DINGELL. You had been advised, then, that our representatives were coming down there?

Mr. CARO. I don't recall the specific date, Mr. Congressman.

Mr. DINGELL. You had been advised, though, that staff members of the Subcommittee on Energy and Power were coming to Houston?

Mr. CARO. Yes; Mr. McNeff was discussing matters with them.

Mr. DINGELL. Mr. McNeff had advised you of that. What did Mr. McNeff say to you at that time about the representatives of this subcommittee coming down? What did he say their purpose was in coming, and what were the discussions and where did they take place?

Mr. CARO. Well, at that time Mr. McNeff was a working partner in our strike force. Whether it was conducted in Mr. Canales' office or my office or the task force office, which was jointly occupied by the FBI and the Department of Justice attorneys, I don't recall.

But I recall the fact situation. I recall that Mr. McNeff mentioned that a couple of your representatives were in fact coming to Houston.

Mr. BARRETT. And did you communicate this information to Mr. Canales or anyone else?

Mr. CARO. Certainly.

Mr. DINGELL. You communicated this to Mr. Canales?

Mr. CARO. Well, you know—we are in one building. We are in one office. We are sharing space.

Mr. DINGELL. I am just inquiring.

Mr. CARO. I don't recall, sir, but I imagine I would have provided that information to Mr. Canales.

Mr. BARRETT. When discussions were had during that day, prior to the files being moved by you and Mr. Canales, or anyone else——

Mr. DINGELL. What time of day were the files moved?

Mr. CARO. I do not know, sir.

Mr. DINGELL. What day were the files moved?

Mr. CARO. I don't know.

Mr. DINGELL. Were the files moved prior to the time that our staff came down there?

Mr. CARO. Me specifically know? No. I was advised by my agent personnel that they were in fact placed in the FBI space from the Department of Energy space.

Mr. DINGELL. They were placed where?

Mr. CARO. In space occupied by the task force, sir, in the Federal—in the Justice Department building, in contrast to the previous Department of Energy space.

Mr. DINGELL. Were these files, then, involved in any grand jury proceeding, or had they been placed in whole or in part before the grand jury?

Mr. CARO. I don't know, sir.

Mr. DINGELL. Who would know?

Mr. CARO. Mr. Canales, sir.

Mr. DINGELL. Mr. Canales would know?

Mr. CARO. I am sure they were obtained under the utilization of a grand jury subpena.

Mr. DINGELL. Say that again.

Mr. CARO. In some instances I am sure the records were obtained by the utilization of a subpena.

Mr. DINGELL. These were housekeeping files of DOE, were they not?

Mr. BARRETT. No, sir, they were files of Conoco, which had been subpenaed by the Department of Energy during their investigation between March and July 1977. They were original records of the company.

Mr. CARO. We were utilizing those records, sir.

Mr. DINGELL. Who was it that instructed that these records be moved from where they were to—first of all, where were these records prior to the time of movement?

Mr. CARO. I do not know, sir.

Mr. DINGELL. Who would know?

Mr. CARO. Mr. Canales.

Mr. KEENEY. We have a letter here in which the whole chronology is set out, Mr. Chairman, that the U.S. attorney instructed the Bureau to transfer—to take possession of the documents in connection with the grand jury investigation.

Also, in the letter it is stated that the decision to transfer the Conoco files was made prior to and absent any indication or knowledge on the part of the U.S. attorney's office that staff members of

the Subcommittee on Energy and Power would be visiting in Houston, Tex.

"The files were removed to facilitate the investigation and to insure that the secrecy of the grand jury investigation would be maintained."

Mr. DINGELL. Staff members of the Subcommittee on Energy and Power requested those documents, did they not?

Mr. KEENEY. I assume they did.

Mr. DINGELL. And they were refused those documents?

Mr. KEENEY. I think they were because they were about to be used in a grand jury inquiry, and as has been brought out very fully in this hearing, we were running into—we had to move rapidly on that investigation.

Mr. DINGELL. Is there any requirement of law that members of a congressional committee staff be foreclosed from looking at documents in the custody of the Department of Justice?

Mr. KEENEY. Normally, documents in the custody of the Department of Justice are not made available to staff of congressional committees. There is a procedure for that, Mr. Congressman.

Mr. DINGELL. Sir?

Mr. KEENEY. There is a procedure for making available information to congressional committees.

Mr DINGELL. What is that procedure?

Mr. KEENEY. The procedure is that where a committee has jurisdiction over the matter that is being looked into, a letter is sent by the chairman of the committee to the Attorney General requesting access.

Mr. BARRETT. My point would be that these were Department of Energy files, and that the grand jury did not actually begin to receive these materials until July 8, which would have been 3 weeks after our arrival. And it was just rather curious——

Mr. DINGELL. Let me inquire. When were the documents moved from DOE's custody into the custody of Mr. Canales?

Mr. KEENEY. I don't have that date, Mr. Chairman. The only date I have is the date on which Mr. Easer, the assistant U.S. attorney, had a conversation with Mr. Barrett and Mr. Stockton. That is June 15.

Mr. BARRETT. And that was the day after we went down.

Mr. DINGELL. What day were the records moved from the custody of DOE into the custody of the Department of Justice?

Mr. KEENEY. I don't know. I suggest Mr. Barrett may know that.

Mr. DINGELL. Well, Mr. Barrett is not under oath. He is not a witness. Will you submit that information for the record, please?

Mr. KEENEY. Yes, sir, we will.

[The information requested had not been received at the time the hearings were printed.]

Mr. BARRETT. Mr. Chairman, could I ask if there are any Bureau memoranda relating to the interview of Mr. McNeff that would have described our arrival, and, also, then, any memoranda describing the actual file transfer be made available.

I think that may have already been covered.

Mr. DINGELL. I think they are covered, but if they are not, we would request them at this time.

Gentlemen, I have here some questions I think are quite interesting.

A DOE attorney has advised our subcommittee that while he was reviewing old utility files, he discovered hundreds of daisy chain cases that he says have never been investigated.

Now, gentlemen, are you or are any of you familiar with the La Gloria pipeline company case?

Mr. KEENEY. I am not, Mr. Chairman.

Mr. DINGELL. Are any of you gentlemen familiar with it?

Let me just give you a letter which our staff, I think, has presented to you already. It is on the letterhead of La Gloria Oil & Gas Co., 921 Main at McKinney, P.O. Box 2521, Houston, Tex. 77001. And it is signed by Mr. Richard F. Whittington, assistant manager, Product Supply and Distribution, dated November 7, addressed to Mr. Frank English, Fedco Oil Co.; Mr. Bob Johnson, Conoco Oil Co.; Mr. Lee Moore, Energy Marketing Co.; and Mr. Bob Whitson, Gustafson Oil Co. And the addressees are respectively in Houston, Houston, Abilene, Wichita, Kans.

The letter is as follows:

Gentlemen: The following book transfer has been agreed to among all companies concerned and will be effective in October business:

Product: No. 2 fuel oil. Volume: 25,000 barrels. Transfer sequence: La Gloria to Energy Marketing to Fedco to Gustafson to Conoco to La Gloria. Location: Tyler, Texas.

Now that indicates to me that the oil never moved, just sat there in Tyler, Tex.

Thank you for your cooperation. Yours truly, LaGloria Oil and Gas Company, Richard F. Whittington, Assistant Manager, Product Supply and Distribution. Copy to Mr. R. L. Martin.

The letterhead is La Gloria.

Now, the following document is a flow chart of sales of diesel oil. And it says La Gloria, EMC, Petroleum Express, EMC, Fedco, Gustafson, and Continental, and then back to La Gloria.

Does this look like a daisy chain to you?

Mr. KEENEY. I don't know what it could be. But if the auditor from DOE thought there was something wrong with the transaction, he had an obligation to bring that to the attention of his superiors, and if they didn't do anything about it, he had an obligation to bring it to the attention of the Inspector General in the Department of Energy.

Mr. DINGELL. Well, do you know whether there was a DOE audit in the *La Gloria* case?

Mr. KEENEY. We don't know, sir.

Mr. MULLEN. I have never seen this document before.

Mr. DINGELL. The answer is that I am advised that the investigation was halted over the protests of the auditors, and that the chain was not traced back because of imposed internal DOE limitations caused by a lack of DOE auditors and other resources to complete the job.

Now, in addition, I am advised this audit group was not permitted to talk to Conoco, since only the special counsel's office in DOE Washington could do so. They were not permitted to talk to the auditors doing the Conoco audit in the *Conoco* old oil-new oil case.

Do you have any knowledge of these facts?

Mr. KEENEY. No, sir.

Mr. FISHKIN. I have no knowledge.

Mr. DINGELL. Well, this La Gloria transaction occurred in November, as a matter of fact, November 7, 1974. The statute of limitations then I guess runs out in 6 months. And I guess it will become another of a goodly number of cases which because they were allowed to sit and languish, may never come to trial because of the running of the 5-year statute of limitations.

Mr. KEENEY. I don't know whether or not actually this is an indication of a violation. It may or may not be. But the ones who would look at the audit results and make that preliminary determination would be DOE.

As far as I know, we have never received this, Mr. Chairman.

Mr. DINGELL. It does look at least like something somebody ought to be looking at, doesn't it?

Mr. KEENEY. The somebody would be DOE.

Mr. DINGELL. It is almost prima facie evidence, I would say, of a daisy chain, is it not?

Mr. FISHKIN. No, sir.

Mr. DINGELL. Now, what about——

Mr. VOLKMER. Just a minute. The gentleman says, no, sir.

Mr. FISHKIN. It could be. But it is not necessarily. It could be an exchange, it could be any number of things.

Mr. VOLKMER. Exchange for what purpose?

Mr. FISHKIN. Well, Congressman, very often in the industry, rather than pick up the product from one point and move it to another point, companies will exchange with another company which has something at point 2 and they just transfer title.

Mr. DINGELL. Well, in this case the product began at Tyler, Tex., and it ended at Tyler, Tex. According to the information that I have given you, there is no evidence that it ever moved.

Mr. VOLKMER. What you are telling me is that La Gloria could owe 25,000 barrels to Energy Marketing; Energy Marketing could owe 25,000 barrels to Fedco; Fedco could owe 25,000 to Gustafson; and Conoco could be owed 25,000 from Gustafson and 25,000 barrels could be owed by Conoco to La Gloria. Is that what you are telling me?

Mr. FISHKIN. There is no indication on this where the product is.

Mr. VOLKMER. Sure there is, No. 2 fuel oil. It says so right on it, "Product, No. 2 fuel oil."

Mr. FISHKIN. Yes, sir, I see that. It says location, La Gloria, Tyler. La Gloria letterhead is Houston. We have no indication on this as to where La Gloria may have the product in the first place.

Mr. VOLKMER. That is correct. But it is only a book transaction.

Mr. FISHKIN. That is correct.

Mr. VOLKMER. It could be something right, but it could also be something wrong.

Mr. FISHKIN. It could be anything.

Mr. DINGELL. I am going to yield to counsel here.

Mr. RAIKIN. A number of DOE attorneys and auditors claim there were daisy chains involved in the selling of fuel oil to almost every utility in the country. However, since 1973 DOE has investigated only a handful of these cases.

What is the main Justice Department and the FBI doing to investigate all the cases which DOE has chosen not to investigate?

Mr. KEENEY. If DOE has chosen not to investigate unless there is a specific allegation, it is brought to the attention of either the FBI or main Justice, we are not doing anything about it because we don't know about it. And we certainly don't have the resources to go through the DOE files and every audit they have conducted to see whether or not there might be indicia of criminality.

Mr. RAIKIN. You don't have the resources; right?

Mr. KEENEY. We don't have the resources. And even if Congress were about to give it to us, I would not advocate you giving us the resources because it would be a terrible waste of resources.

That type of thing should be done by the auditors who are in the best position to pick up the indicia of fraud. And when they pick it up, they should refer it to Justice for a followthrough.

Mr. RAIKIN. Is it your position it would be a waste of time for the Department of Energy to track down these daisy chains?

Mr. KEENEY. I did not say that. I said that it would be a waste of resources for the Department of Justice to do it. If it is to be done, it should be done by the Department of Energy. Let them do what they do best, and let us do what we think we do best.

Mr. RAIKIN. Is it accurate to say since 1977 alone the utilities in the United States have passed through over $14 billion in higher fuel costs to consumers through the fuel adjustment clause?

Mr. KEENEY. I don't know.

Mr. RAIKIN. What is being done in the Department of Justice to get refunds for American consumers and customers who were bilked out of billions of dollars as a result of the Florida daisy chain case and related similar type cases around the country?

In other words, what is being done in the civil side? We have heard a lot this morning about the criminal side.

Mr. FISHKIN. There was a civil case started which was stayed as a result of the criminal case. The civil case will go forward as soon as the criminal case is over. And in the event that doesn't happen, DOE does not have the same time constraints on refunds that are imposed on us by the courts.

Mr. RAIKIN. Mr. Fishkin, are you aware of a publication entitled Platt's Oilgram?

Mr. FISHKIN. I have heard of it.

Mr. RAIKIN. Could you describe to the subcommittee what Platts Oilgram is?

Mr. FISHKIN. I am not sufficiently familiar with it. I do know that it states prices in the oil industry. Exactly where their information comes from I don't know.

Mr. RAIKIN. It is in fact an oil industry roster of the going rates paid by various utilities for No. 2 distillate crude, is it not?

Mr. FISHKIN. Well, that is your testimony. I don't know.

Mr. RAIKIN. OK.

Are you familiar with the fact that during the time the allegations arose in the *Florida Power* case, Platt's Oilgram reflected that the going rate for No. 2 distillate crude in the gulf region of the United States was stated at 54 cents per barrel?

Mr. FISHKIN. It is quite possible.

Mr. RAIKIN. Are you also familiar that at the same time it was common knowledge among utility purchasing agents all over the gulf coast area, in fact, all over the United States, that No. 2 distillate crude oil was available to anyone who looked for it, for 18 cents per barrel?

Mr. FISHKIN. I don't know that that is true.

Mr. RAIKIN. You don't know that that is true?

Mr. FISHKIN. There was at that time fuel oil legally priced at 54 cents a gallon and higher.

Mr. RAIKIN. How do you explain the coexistence of a Platts Oilgram determination of a going rate of 54 cents, when common knowledge at the time would establish that 18-cents was an easy price to establish—to purchase the same type of No. 2 distillate crude oil, unless you had daisy chains involved?

Mr. FISHKIN. Mr. Raikin, I think you have to first of all qualify your statement to a certain period of time. From October to about March, October 1973 to March of 1974, there was an embargo. During that period of time, there was a shortage of product available. The 18-cent price you are talking about was a contract price established between American refiners and their historic customers.

Florida Power Co., since they put peak generating units in place in the beginning of 1973, had not had any historic purchases of No. 2 fuel oil, therefore, had no historic contracts.

They, like a number of purchasers in the winter of 1973, were looking around and scratching around for product wherever they could find it, not knowing if the embargo was going to continue, and if that produce was going to be available.

There was foreign product coming into the country. There was—the OPEC countries increased their prices by 400 percent. That product was not controlled until it hit the United States, so it was much more expensive. And 54 cent product was, therefore, legally available.

Mr. RAIKIN. Is it possible, Mr. Keeney or Mr. Fishkin, based on your experience, or Mr. Mullen, Mr. Caro, Mr. Henehan, any of you, on your experience in these cases involving some form of white-collar crime in the oil industry, that there is in fact a very large black market for oil in this country to this day, and that that black market is participated in actively by these resellers who blossomed after 1973?

The question is based on your experience—is it possible? Do we know for sure?

Mr. CARO. I can answer from the standpoint of Houston. I know that around 1972 there may have been 2, 3, less than 10 resellers in Houston. And at the present time there are over 100 resellers in Houston.

Mr. RAIKIN. How do you account for that rise in the number of resellers?

Mr. CARO. Well, I don't have the expertise to make that type of judgment. Those are basic facts, the increase in numbers.

Mr. RAIKIN. Mr. Keeney, could you comment on that?

Mr. KEENEY. No, I cannot.

Mr. RAIKIN. Are you familiar, Mr. Keeney, with the testimony of witnesses at last week's hearing that resellers in fact serve no economic purpose except to jack up the price of oil?

Mr. KEENEY. I think that is true with respect to many resellers. I am not prepared to say it is true with respect to all of them.

Mr. DINGELL. Can you tell us, Mr. Keeney, any other function that is served by the resellers?

Mr. FISHKIN. Congressman, in a shortage situation there are a lot of people who don't have historic contracts to purchase. And there is a lot of spot product on the market.

Mr. DINGELL. In times of shortage there is not a good bit of spot on the market, if the allocation controls are being applied.

Mr. FISHKIN. That only applies to the United States. There is a lot of spot market product coming in from overseas.

Mr. DINGELL. All right. Let's say, then, there is a place for resellers in the international market. But what about resellers in the U.S. market. Do they provide any service?

Mr. FISHKIN. Some of them do, some of them don't.

Mr. DINGELL. What service do they supply?

Mr. FISHKIN. They bring together people who have excess product and people who need it. And there are people with excess product.

Mr. DINGELL. Well, isn't that question of excess product dealt with by the Department of Energy through its allocation regulations?

Mr. FISHKIN. Not necessarily.

Mr. DINGELL. Not necessarily? Why do you make that statement?

Mr. FISHKIN. Well, because there may be people out in the marketplace who have product through their allocation system which in any particular month they don't need, although they will need their allocation the next month, so it is excess product. Therefore, they can sell it.

Mr. DINGELL. Isn't that to be handled through DOE's allocation regulations?

Mr. FISHKIN. Well, if there is an application made for a change in the allocation system, yes.

Mr. DINGELL. Yes. But isn't that supposed to be in times of very real shortage, to be dealt with through DOE's allocation system as opposed to setting up some resellers?

Mr. FISHKIN. Congressman, I don't know that the allocation system would respond on a month-to-month basis for all of the product for the country.

Mr. DINGELL. You are arguing theory and I am arguing law. You are an attorney. You understand the difference, I am sure.

Mr. FISHKIN. I hope so.

Mr. DINGELL. All right. Then let us address the law, and not the theory.

What is the law? The law is that you go back to DOE, isn't that right, and say, "I have excess," or you simply let that stuff lie in the hands of the supplier, do you not?

Mr. FISHKIN. The reality, Congressman, is that a lot of people who have an allocation which will draw their entire allocation, and if they don't use part of it, they will sell off the excess.

Mr. DINGELL. All right. In times of shortage, how much oil is there that is not used by the purchaser under the allocation?

Mr. FISHKIN. I have no idea.

Mr. DINGELL. Very little; isn't that a fact?

Mr. FISHKIN. I have no idea.

Mr. DINGELL. Well, would you gainsay me if I were to say that?

Mr. FISHKIN. I would say that there is a lot of excess product coming in from overseas, Congressman.

Mr. DINGELL. We are talking about the United States.

Mr. FISHKIN. I don't know if you can distinguish, because once it gets into the system it all looks the same.

Mr. DINGELL. That is correct. But as between crude oil producers and crude oil refiners, there is not an excess, is there, of domestic in times of shortage of the kind we saw in 1973 or 1974.

Mr. FISHKIN. If you are limiting your comments to crude oil resellers, there are a lot of resellers out there, Congressman. There are crude oil resellers, there are product resellers.

Mr. DINGELL. Well, let't talk about crude oil resellers. When there was not a surplus of supply there were only about 15 or 20 of them in the country. All of a sudden they grew to something like 450.

Mr. FISHKIN. That is correct.

Mr. DINGELL. They grew like this overnight, most of them dealing in crude oil produced in the United States by inserting themselves not the allocation process between the refiner and the crude oil producer.

I am asking you what service did they do, and was there in fact a surplus of U.S. crude?

Mr. FISHKIN. In 1973 and 1974, before the allocation system was firmly in place, there was probably a large disruption from people who did not have historic relationships with producers.

Mr. DINGELL. The allocation system was firmly in place in 1973 and 1974.

Mr. FISHKIN. It took place on January 15, 1974.

Mr. DINGELL. But it was firmly in place in 1974.

Mr. FISHKIN. But it was based upon the 1972 historic relationship, Congressman.

Mr. DINGELL. I am still curious, what service did these crude oil resellers provided in 1974? The allocation regulations were supposed to deal with these matters.

Mr. FISHKIN. They would put together those who had the product and could sell it with those who needed it.

Mr. DINGELL. United States?

Mr. FISHKIN. Yes, sir.

Mr. DINGELL. Your understanding is different than mine.

Counsel?

Mr. RAIKIN. Mr. Keeney, in reviewing the history of the investigation of the *Conoco* case, and the old oil-new oil reseller flip cases generally, it seems clear that the FEA, DOE's predecessor agency, had clear evidence of the existence of massive criminal reseller fraud as early as 1974 and 1975. Yet the first referral to the Justice Department for criminal prosecution did not occur until the dates indicated in our previous discussion of the *Conoco* case.

Could you explain again and clarify for the record why the Justice Department waited essentially until almost 1978 to become really actively involved in such oil fraud cases?

Mr. KEENEY. I am trying to remember, Mr. Raikin, the background on that. I did have discussions with Mr. Bloom on that. And they were pursuing additional investigation down in the Houston area. I don't know why it took that period of time for them to make the criminal referral.

Mr. RAIKIN. Mr. Fishkin or Mr. Keeney, we have before this hearing asked you some information about two meetings that occurred in November and December of 1977. There was a meeting in November of 1977 at the Justice Department called at the request of DOE, attended so far as we can determine by Mr. Bardin, the Administrator of the DOE Economic Regulatory Administration, Barbara Cook, Chief of the Civil Division of the Justice Department, Benjamin Civiletti, who I believe was then head of the Criminal Division, and Mr. Eagan, the Associate Attorney General, together with several DOE officials.

What was discussed at this meeting?

Mr. KEENEY. We are going to have to check on that, Mr. Raikin. That is one we slipped on.

Mr. RAIKIN. Didn't we ask you to check on it?

Mr. KEENEY. We did.

Mr. FISHKIN. We have been attempting to find out.

Mr. RAIKIN. The question is whether or not at this meeting the Department of Energy made an impassioned plea for help from the Justice Department, and the subcommittee would appreciate your obtaining any oral information from the attendance or any memos or minutes of the meeting which may have been made.

Mr. KEENEY. Very well. We will get it for you.

Mr. RAIKIN. The second meeting that I referred to occurred on December 8, 1977. I will enter the attendance sheet of that meeting onto the record. It indicates, let the record reflect, Mr. Fishkin, you attended that meeting; is that correct?

Mr. DINGELL. Without objection, the document referred to will be inserted in the record at this point.

[The documents referred to may be found in the subcommittees' files.]

Mr. FISHKIN. If the document says I attended the meeting, I did. I recall attending a meeting at the DOE in December 1977.

Mr. DINGELL. Also attended by several ranking officials of Justice and the Department of Energy. Mr. Fishkin, what occurred at this meeting?

Mr. FISHKIN. It was a general briefing meeting regarding crude oil reseller cases that the Department of Energy was about to refer.

Mr. DINGELL. Why did it take 2 months after this meeting to get the first several sent to Houston, that would be the *Coral* case.

Mr. FISHKIN. If my recollection is correct, there were certain things we asked them to do before referring it.

Mr. DINGELL. Why were no FBI agents, Mr. Henehan, assigned to U.S. Attorney Canales after this meeting of December 8, at which time our information is Mr. Canales asked for supplemental assistance from Main Justice and the FBI.

Mr. HENEHAN. I am going to refer to Mr. Caro.

Mr. CARO. Shortly thereafter, sir, we did in fact receive, we created a special task force with individuals assigned on a temporary basis from various field offices throughout the country to Houston, for a 90-day period. The two CPA's that were assigned to that task force were retained in Houston, transferred to Houston permanently, and are working on the matter today.

I don't think we have ever had a manpower problem with the U.S. attorney in Houston.

Mr. DINGELL. I would like the record to reflect that according to one of the people that attended this meeting, who has been interviewed by the subcommittee staff, DOE officials at the meeting of December 8 urged the Justice Department to get involved in a major and substantive way with oil cases, and that in fact they were urging this because in their words the Carter administration's entire two-tier pricing system would fall apart if the schemes were allowed to continue unprosecuted.

Mr. O'Rourke of DOE pointed out to Justice, according to our sources, that DOE had no personnel trained to investigate criminal cases and that it complained at this meeting about its limited subpena powers.

In view of all of this, why didn't Justice respond more substantively and more quickly, Mr. Keeney?

Mr. KEENEY. I am not sure I know the delay. Maybe Mr. Fishkin can address it.

Mr. FISHKIN. I don't understand your question. We did respond.

Mr. DINGELL. First of all, if counsel would read the statement, and then, gentlemen, we will ask you whether or not the statement is, in fact, true, and then we will ask you to respond to the subsequent questions.

Mr. RAIKIN. The statement in essence is paraphrasing representations by DOE officials that were made at the meeting of December 8, 1977, in which the Department of Energy for the specific reasons outlined urged the Justice Department to give immediate help to the Department of Energy to investigate and ultimately prosecute oil reseller cases. The question is, why did the Department of Justice not respond more quickly?

Mr. FISHKIN. There are two questions. Actually, the first part I do not recollect that that statement was made. That does not mean that it was not made, but I have no present recollection of it being made. As far as part 2, we did respond.

Mr. RAIKIN. Mr. Keeney, if I understand your primary reason for asserting that it is the Department of Energy and not the Department of Justice that bears primary responsibility for the initial determinations that willfulness rising to the level of criminality has occurred in a given case, it is the Department of Justice's position that the expertise to make such a determination of criminal willfulness lies primarily in the Department of Energy. Is that a fair summary of your position?

Mr. KEENEY. No; that is not a fair statement.

Mr. RAIKIN. Could you clarify it?

Mr. KEENEY. I think that we in the Department of Justice have the function of making a determination whether there is sufficient proof of willfulness. What I was suggesting was that when they have indications of fraudulent conduct of any variety, whether it

be a submission of a willful or nonwillful statement that happens to be false, that when they have those indications or indicia or badges of fraud, they should consult with us, but they are the ones that are going to have to ferret out and find out the suspicious transactions such as the chairman referred to, and if they do not have an innocent explanation for what appears to be a suspicious transaction, they should pursue it and at a point where they have an indication that it may be criminal, they should consult with us.

Mr. RAIKIN. Mr. Keeney, when Mr. Bloom came to you on March 17 regarding the *Conoco* case——

Mr. KEENEY. March 17 when?

Mr. RAIKIN [continuing]. 1977, did you explain to Mr. Bloom before you told him that he would have to do the initial investigation himself what were the elements of an offense under the wire fraud, mail fraud, or statutes that his investigators specifically would have to look for?

Mr. KEENEY. I do not know whether I did or not.

Mr. RAIKIN. He advises us that you did not.

Mr. KEENEY. Did not? What I did, I think I expressed the opinion that they should continue with their investigation at that point, then should come back to us later.

Mr. RAIKIN. Mr. Keeney, is it accurate that on several occasions DOE auditors have been barred from interviewing officials of companies involved in reseller fraud, thereby being cut off from potential crucial information?

Mr. KEENEY. Barred by whom?

Mr. RAIKIN. Various officials of companies involved in resellers. I am not mentioning companies because of your request to the subcommittee.

Mr. KEENEY. Who is barring them? Is it Justice?

Mr. RAIKIN. DOE, by DOE policy.

Mr. KEENEY. I do not know.

Mr. FISHKIN. There is a procedure where if DOE is going into a company, and that company is the subject of one of our investigations, then we will request that DOE not go in and do their interviewing, because it would impede the criminal case, if that is what you are talking about.

Mr. DINGELL. Can you tell me why?

Mr. KEENEY. I will, Mr. Chairman. If they go in, if the auditors go in and start conducting investigations, sometimes we run into a situation where the auditors will represent that they are doing only a civil investigation, whereas in fact they have got indications of criminality, and they might mislead the person who is being interviewed to his detriment, and having been misled to his detriment, anything that he turns over or makes available to them pursuant to that request could be tainted, and therefore not usable in a criminal prosecution.

Mr. DINGELL. I am curious. What does this do to DOE's enforcement efforts of pricing as regards matters under your criminal jurisdiction as regards other civil matters that might have properly been a matter of concern to DOE?

Mr. KEENEY. What we are dealing with here is what is called a parallel proceeding. They have got an administrative or civil proceeding, and they have also got a referral to us which results in a

criminal proceeding. We try to keep them separate, Mr. Chairman, so that grand jury information on the one hand is not used to benefit the civil or administrative investigation, and civil discovery or administrative discovery is not used to benefit the criminal investigation to the detriment of someone who is being interviewed and being misled.

Mr. DINGELL. Does this not have the practical effect of almost foreclosing civil inquiries by DOE on whole broad timespans of activities that are properly under their enforcement responsibility?

Mr. KEENEY. No, sir, it creates a problem, and the way that we suggest that that be handled is that when we are dealing with a parallel proceeding that is in a grand jury or at a minimum referred to the Department of Justice for criminal consideration, that the prosecuting attorney who is in charge of the criminal investigation be contacted in order to determine whether or not the interview that is contemplated would interfere with the criminal investigation.

Mr. DINGELL. Of course under your manual, and under the DOE's manual, before that can happen the DOE field people have got to communicate with their office in Washington, which in turn has got to communicate with your office in Washington, which in turn has got to communicate with the Department of Justice U.S. attorney at field level, and the communication then must go back from the Department of Justice U.S. attorney locally, to the Department of Justice in Washington, the Department of Energy in Washington, and back down to the——

Mr. KEENEY. No.

Mr. DINGELL [continuing]. Field people——

Mr. KEENEY. No, sir.

Mr. DINGELL [continuing]. In DOE.

Mr. KEENEY. No, sir. Once the criminal referal is out in the field, the assistant U.S. attorney or the attorney for Mr. Fishkin's shop is in charge as far as we are concerned, and we encourage at that point dialog between the person, the prosecutor on the scene, and the DOE people. There is no proscription on the contact once that referral is made.

Mr. DINGELL. What is the language of your instructions to your DOE, or rather to your local U.S. attorneys on this matter? Do you have a manual or do you have instructions to them?

Mr. KEENEY. We do not have any manual, except we have a letter that we send out with the referrals, but I do not think that gets into this point. That is a standard practice, Mr. Chairman, where an assistant U.S. attorney or a departmental attorney is handling a case in the field, and civil aspects develop with respect to it. The standard practice is coordination with that prosecutor to see that both proceedings can, to the extent possible, proceed without harming each other.

Mr. DINGELL. Thank you. Counsel?

Mr. RAIKIN. Mr. Mullen, the participation of major oil companies, including the largest oil companies in the country, is essential to the continued success of the resellers' scheme; is that not correct? I am asking their participation, putting aside for the moment whether it is knowledgeable or willful.

Mr. MULLEN. I could not say that with certainty.

Mr. RAIKIN. Mr. Keeney, is that correct?

Mr. KEENEY. I do not think that is necessarily so, Mr. Raikin.

Mr. RAIKIN. Could you explain your reasons?

Mr. KEENEY. I would rather let Mr. Fishkin handle that, if you will.

Mr. RAIKIN. Please.

Mr. FISHKIN. The first sale may not be where the daisy chain, if you are talking about a daisy chain, begins. The major oil company is going to know who they are selling to. They are going to know what price they are selling for. They are not going to know the rest of the transaction.

Mr. RAIKIN. Major oil companies usually do know who they are selling to and buying from; is that not correct?

Mr. FISHKIN. There is an invoice. They have got to know.

Mr. RAIKIN. Right.

Mr. FISHKIN. They know who they are invoicing and where the money is coming from. That they are going to know, but the balance of the chain, whether it is a crude oil chain or a product chain, they are not going to necessarily know. What happens to their invoice after the fact they are not going to know, if somebody flips low-tier to high-tier.

Mr. RAIKIN. Mr. Keeney and Mr. Fishkin, I will not name the name of this case because I am advised that it is the subject of a current investigation, so I will put it to you this way. Are you aware of any case in which auditors in May of 1978 found that a major oil company in the United States, which was both a producer and a refiner, bought back at a price of approximately $12 a barrel the same oil that it had sold at a price of $5 a barrel.

Mr. FISHKIN. Yes.

Mr. RAIKIN. Are you aware, Mr. Fishkin, or is it true that the Department of Energy never authorized its auditors to audit the major oil company in question?

Mr. FISHKIN. I think that was a spinoff of a case that had already been in the U.S. attorney's office, and therefore it was already being looked at by the prosecutors, so the Department of Energy was asked to step back, if I am thinking about the same case.

Mr. RAIKIN. Has this happened very often, that the Department of Energy has precluded its auditors from auditing—its auditors in the field from auditing—a major oil company?

Mr. FISHKIN. I think if it is a situation where the case has already been referred, that the grand jury is already looking at it, and then Department of Energy comes forward and wants to look at the same transactions on a civil basis, yes. I do not know if it is happening anywhere else, but it would be consistent.

Mr. RAIKIN. So that the split in authority between the Department of Energy and the Department of Justice, then within the Department of Justice between the civil side and the criminal side, in some cases can preclude complete investigations by any one given auditor looking at a specific case and cause delays.

Mr. KEENEY. That is possible, yes. There is a preference given to the criminal case, and if a determination is made that the action on the administrative or civil side would impact adversely on the criminal case, sometimes they are asked to defer.

Mr. RAIKIN. Thank you very much.

Mr. DINGELL. The Chair thanks counsel.

The Chair advises that my good friend and colleague, the co-chairman who is presiding over this meeting, Mr. Conyers, suggested that we should adjourn at 12 noon and return at 2 p.m. Gentlemen, would that meet your convenience?

Mr. KEENEY. Yes, sir.

Mr. DINGELL. Then the committee will stand adjourned until 2 o'clock.

[Whereupon, at 12:40 p.m., the subcommittees recessed, to reconvene at 2 p.m., the same day.]

AFTER RECESS

[The subcommittees reconvened at 2 p.m., Hon. John Conyers, Jr., presiding.]

Mr. CONYERS. The subcommittees will come to order.

I would like to express appreciation to the witnesses for returning this afternoon to complete our discussion in progress. I remind you, as you are probably aware, that you are still under oath from this morning.

Mr. Keeney, is it unreasonable to suggest that it is the responsibility of the Department of Justice to assess the magnitude of the criminal fraud problem in the energy industry, oil in particular?

TESTIMONY OF HON. JOHN C. KEENEY, ACCOMPANIED BY RICHARD M. FISHKIN, DANA E. CARO, FRANCIS M. MULLEN, JR., AND JOSEPH E. HENEHAN—Resumed

Mr. KEENEY. I do not think we have the capability of making that assessment, Chairman Conyers. We base—at least we do not have it in the Criminal Division. We base, assess whatever judgments we come to, on what we receive in the way of referrals from DOE, and I really would not know how to start to go back into DOE beyond what they refer to us, and try to come out with some evaluation of the overall fraud. Obviously there is a great potential for fraud, because there is a lot of money there.

Mr. CONYERS. This is a shocking response. You are telling me that for the crimes that are committed of a white-collar nature inside the oil industry, the Department of Justice is unable to examine their magnitude, and that it is the responsibility of another Cabinet agency to explain that to you?

Mr. KEENEY. It is the responsibility of another Cabinet agency to make the preliminary determinations as to whether or not there is fraudulent conduct, yes, sir.

Mr. CONYERS. Do you have some statutory or policy authority to back up your assertion?

Mr. KEENEY. Our statutory authority is set forth in my statement with respect to handling of criminal matters.

Mr. CONYERS. What is that statutory authority?

Mr. KEENEY. To handle the investigation and prosecution of criminal matters, but not to go ferreting into an agency to see whether or not there is any criminal——

Mr. CONYERS. In other words, white-collar crime in the oil industry is the Department of Energy's primary responsibility?

Mr. KEENEY. It is their primary responsibility to bring to us indications of fraudulent conduct, just as it is the responsibility of HUD, HEW, and the other agencies to bring to our attention whatever indicia of fraud or other criminality are uncovered in the course of their audits, and the supervising of the integrity of their programs.

Mr. CONYERS. Then I take it from that that if they do not bring you anything, there would be hardly any way for you to assess what is going on there?

Mr. KEENEY. If they did not bring us anything, Chairman Conyers, we would have to rely entirely on people, maybe a congressional committee, maybe even a columnist, maybe a private citizen, giving us some indication of illegal conduct in the particular program.

Mr. CONYERS. Then what in fact has and does occur in this area in which the two subcommittees are inquiring?

Mr. KEENEY. For the most part the matters that are developed in the criminal cases are matters that are brought in to the Department of Justice by DOE.

Mr. CONYERS. They are not in the crime-fighting business.

Mr. KEENEY. No, sir, they are not, but what they are in the business of is auditing and looking at books to see that the programs that they supervise are carried out with integrity, and when they find any indications to the contrary, it is their responsibility to bring that to our attention.

Mr. CONYERS. If they do not have any experience in criminal investigation, much less criminal prosecution, how are they going to know what to ferret out? For example, title 18 violations.

Mr. KEENEY. Very few agencies, Mr. Chairman, have that much expertise in criminal investigations. Their function is to see if there is something wrong with their system, and to bring the specifics of that possible wrongdoing to the attention of the Department of Justice, which will then utilize the resources of the FBI, the grand jury, and the Criminal Division, to try and develop cases.

Mr. CONYERS. Has there ever been a case in the oil industry involving fraud, price jacking, label flipping, daisy chaining, and other related types of criminal activity that have been started without the Department of Energy bringing it to your attention?

Mr. KEENEY. I think there have been some; yes, sir.

Mr. CONYERS. You mean one?

Mr. KEENEY. If I may defer to my colleague.

Mr. CONYERS. Of course.

Mr. FISHKIN. There have been at least two that I can think of right now, one in Oklahoma—both in Oklahoma. One was discovered by the Post Office Department, which has jurisdiction over the mail frauds statute. If not discovered, I think it was a complaint made to the Post Office Department.

The other one was a complaint made directly to the FBI and the Department of Energy simultaneously.

Mr. CONYERS. Then how many have been then referred to you for prosecution by the Department of Energy?

Mr. KEENEY. We believe the total number that we have on our list that was provided, Mr. Chairman, is 45.

Mr. CONYERS. About 45?

Mr. KEENEY. I will have to check to see whether or not all of those are Department of Energy.

Mr. CONYERS. OK.

Mr. FISHKIN. Mr. Chairman, there have been since the middle of 1977, there have been 43 specific referrals. Some of those referrals involve more than one case, and in addition to that, there have been prior to that smaller DOE regulatory violations which were referred directly to Justice, and were handled by the Civil Division.

Mr. CONYERS. We get 43. How many do you get?

Mr. FISHKIN. That is what I said, 43.

Mr. CONYERS. OK.

Mr. FISHKIN. But again, Mr. Chairman, in that 43, some of those represent more than one case.

Mr. CONYERS. They represent more than one case. In other words, out of one incident there could become several cases?

Mr. FISHKIN. Out of one company investigation very often multiple separate violations occur, separate entities, separate companies, and once the case is referred, we just go with it as far as we can.

Mr. CONYERS. Now what span of time do these 43 instances cover?

Mr. FISHKIN. They cover from mid-1977 to the present.

Mr. CONYERS. 1977 to the present.

Mr. FISHKIN. Conoco I believe is the first one, July of 1977.

Mr. CONYERS. Conoco was your first?

Mr. FISHKIN. Conoco is the first one on this list. There were some cases prior to Conoco, which were not handled through the energy unit. This list involves only those cases in which the energy unit in the fraud section had involvement. There were very few cases prior to that.

Mr. CONYERS. Like three?

Mr. FISHKIN. Very few. I do not have the exact number. Maybe six or seven, mostly misdemeanor-type violations that were handled by the Civil Division.

Mr. CONYERS. Is not one of the critical problems in mounting an adequate investigative effort in the oil fraud area, especially 1973, 1974, and 1975, that the growing magnitude of the problem was not accurately perceived by the Federal Energy Administration, the Department of Energy, or the Department of Justice, for that matter?

Mr. KEENEY. We certainly can say that in the early stages that there were very few cases that developed, Mr. Chairman, and that may have been because of the failure to perceive the problem.

Mr. CONYERS. During this time, it was clear to you, was it not, that the responsible party in DOE did not even have a criminal law background, and as a matter of fact admitted on at least one public occasion that he was woefully unprepared to launch criminal investigations? I am referring to Mr. Bloom.

Mr. KEENEY. Mr. Bloom. Chairman Conyers, we do not ask them to conduct criminal investigations. When they find indicia of criminality, we ask them to bring it to us, and we ask them to do their job, which is an audit function.

Mr. CONYERS. But tell me what constitutes an indicia of criminality.

Mr. KEENEY. Well, if you have got indications of kickbacks with respect to—in the course of the audits, that is a very strong indication of criminality.

Mr. CONYERS. But how in the course of an audit is a kickback going to be revealed by an accountant searching the records?

Mr. KEENEY. Well, they can trace where the funds are going out of the companies.

Mr. CONYERS. The Department of Energy auditors can trace to determine whether there are kickbacks or not?

Mr. KEENEY. They can trace whether money is going in a fashion which suggests a kickback, and if they run into that type of situation, that is where we should get involved.

Mr. CONYERS. And then what do you do?

Mr. KEENEY. Then we bring in the FBI and we will bring in the grand jury. We will subpena all the relevant documents and look at the financial situation of the suspects. If it is appropriate we will immunize certain people who might have information, who might be less culpable.

We would also try to trace their funds through examination of bank records, where appropriate, and we can meet the standards of the 1976 statutes, we would utilize tax returns and tax information.

Mr. CONYERS. So that you budget your resources in this area of oil fraud on the cases referred by the Department of Energy, and not necessarily on the magnitude of the oil fraud problems, since you do not approach it from that point?

Mr. KEENEY. That is right, sir. That is, largely we rely on the Department of Energy to bring cases to us. I might say that to a very large extent that is the way we operate with other agencies, too.

Mr. CONYERS. But there is not any other area of Government that is sitting on top of the largest criminal conspiracy in American history, is there?

Mr. KEENEY. I do not think there is any that is sitting on an industry which has such a tremendous potential for fraud as the Energy. We have gone through, as you know, Mr. Chairman, in the past, tremendous frauds in HUD, which took a considerable amount of time to ferret out.

Mr. CONYERS. But they were not multibillion-dollar frauds. They were cases of individual corruption in and outside of the Federal Government. We are talking about an industry whose activities that are going on inside it are causing each and every American to pay more. The HUD problem was not anything near the magnitude of the problems that you are confronted with in oil.

Mr. KEENEY. The money involved is much greater in oil, but again on a day-to-day basis, there is a lot of money that changes hands in the oil industry. It is much greater at least in the present inflated economy. It is much more than was the case in investigations such as HUD.

Mr. CONYERS. Are you equating the HUD problem with the oil industry problem?

Mr. KEENEY. No, sir, I am not. I am just suggesting that the HUD problem is an example of a situation in the past where the basic, some of the original referrals had to come from the audits

within the agency. Now it was a little easier to attack the HUD problem than it is to attack this one, because we were getting, we had a lot of potential sources of information we were able to get to.

Mr. CONYERS. What was the nature of the HUD problem, and what was its dimensions in terms of money?

Mr. KEENEY. It was all varieties of fraud, whereby they were corrupting people within HUD, and separately, sometimes together, submitting all sort of false statements for which they got financing and money from HUD, and it resulted in a great deal of money being drained out of the program.

Mr. CONYERS. Yes. How much?

Mr. KEENEY. I cannot give you an estimate at the moment. I am not arguing, Chairman Conyers——

Mr. CONYERS. It was insignificant compared to a multiple dollar ripoff?

Mr. KEENEY. What we are dealing with——

Mr. CONYERS. Is that not correct?

Mr. KEENEY. It depends on what we are talking about. If we are talking about what we know about, those people here at the table, we know about the recoveries that we have had down in Texas. We know that we have something like 39 active cases.

Now the settlements in Houston, the dispositions resulted in fines and other settlements running into several million dollars. There is no question about that, and if you multiply that by an appropriate factor, you can come out with billions of dollars.

My only point is, we cannot demonstrate that at this point, Mr. Chairman.

Mr. CONYERS. Demonstrate what?

Mr. KEENEY. We cannot demonstrate that there are multibillion dollar frauds.

Mr. CONYERS. You do not know if they are multibillion dollar frauds?

Mr. KEENEY. All I can talk about is what I have evidence with respect to.

Mr. CONYERS. In other words, can you or can you not talk about a multibillion-dollar fraud in the oil industry?

Mr. KEENEY. As such, I cannot.

Mr. CONYERS. I see. Now what was the magnitude of the HUD frauds that you were referring to?

Mr. KEENEY. They were running into hundreds of thousands of dollars on individual projects.

Mr. CONYERS. And what period of years are we referring to?

Mr. KEENEY. We are referring to the cases started to develop sometime after May of 1972, probably more like late in 1972 and early 1973. Then they went on for maybe 3 or 4 years thereafter.

Mr. CONYERS. That would bring it up to last year?

Mr. KEENEY. Well, we still have some of them.

Mr. CONYERS. How many cases, how many prosecutions are we talking about in round numbers in the HUD area?

Mr. KEENEY. Hundreds.

Mr. CONYERS. Well, 100, 200?

Mr. KEENEY. Well, Mr. Chairman, you put me at an extreme disadvantage. You want the figure, we have it and I can give it to

you. I think we are talking in the neighborhood since May of 1972 of something like 400 or 500.

We will be glad to give you the figure.

Mr. CONYERS. Now did you ever become aware of former FEA Administrator Sawhill pointing out the nature of the criminal activity going on in the oil industry?

Mr. KEENEY. I am not familiar with what you are referring to, Mr. Chairman.

Mr. CONYERS. I am not referring to anything. I am asking if you are familiar with a former Administrator of FEA pointing out that there were great amounts of fraud going on.

Mr. KEENEY. I know the name Sawhill.

Mr. CONYERS. I see.

Mr. KEENEY. But Mr. Chairman——

Mr. CONYERS. The name doesn't ring a familiar bell?

Mr. KEENEY. I would say that somebody pointing out fraud, we take seriously all the allegations with respect to fraud in major programs, and we look into them if there are sufficient specifics that we can follow through on.

Mr. CONYERS. Mr. Sawhill was the Director of the predecessor organization for the Department of Energy. He was not just an unhappy citizen.

Mr. KEENEY. Mr. Conyers, if Mr. Sawhill had any specific allegations of criminality, he had an obligation both as a citizen and as a Federal official to bring them to the attention of the appropriate people.

Mr. CONYERS. Yes.

Mr. KEENEY. I mean not to make speeches about them.

Mr. CONYERS. Did he ever do that?

Mr. KEENEY. I am not aware of any specific allegations. I will check and see if he did.

Mr. CONYERS. Well, if you have any memos or records or letters in that regard, would you make them privy to the subcommittees chaired by myself and Mr. Dingell.

Mr. KEENEY. Yes, sir, we shall.

Mr. CONYERS. Thank you. Now I want to refer you to the front page of the Washington Post dated December 17, 1974:

> FEA cites overcharges to utilities. Fuel oil suppliers probed. The Federal Energy Administration said yesterday some suppliers may have engaged in price gouging in selling fuel oil to public utilities, possibly resulting in overcharges of tens of millions of dollars to consumers.

It goes on:

> The agency said investigators have found cases of power companies paying as much as 80 cents a gallon for distillate oil that left the refinery costing about 20 to 30 cents. One single power company may have been overcharged as much as $15 million.
>
> FEA Administrator John C. Sawhill said that ordinarily the agency would not announce the investigation until it was completed. In this instance, however, our preliminary investigations indicate that the practices under scrutiny are such as should be immediately exposed, he said. Sawhill said that a special staff of 30 investigators would continue to probe, which the agency calls Project Escalator.
>
> FEA identified five types of possible violations: Kickbacks and payoffs to brokers; excessive brokerage fees; excessive transportation and handling costs; necessary movement of the oil to boost handling charges to utilities; and violations of FEA rules governing direction of oil supplies. The agency said that there was also

evidence that some brokers altered invoices, changing price control crude oil, which sells for $5.25 per barrel, to new oil, which sells for some $10 to $11 per barrel.

Are you familiar with those allegations?

Mr. KEENEY. I am not specifically familiar with them, Chairman Conyers, but I would assume that if they were substantial they were included in some of the referrals we got. That would be the normal way to advise the Department of Justice of criminal conduct rather than through the Washington Post.

Mr. CONYERS. You do not take note of matters——

Mr. KEENEY. We do.

Mr. CONYERS [continuing]. That are brought to your attention by the Washington Post?

Mr. KEENEY. We do but we expect public officials, when they have evidence of criminality, to come directly to the people who prosecute. We do, Mr. Chairman, we read, and sometimes initiate investigations based upon allegations in the paper, if they are sufficiently specific, that we will have a basis for the investigation.

Mr. CONYERS. Had someone in the Department of Justice read the paper on December 17 and read this, would this have been specific enough?

Mr. KEENEY. It is specific enough with respect to the type of conduct that could be criminal. It is not specific enough with respect to who they believe is involved in it or why they believe they are involved in this type of conduct.

Mr. CONYERS. So it may not have met the specificity criteria of your Department?

Mr. KEENEY. It does not meet the specificity at all.

Mr. CONYERS. I see.

Mr. KEENEY. Insofar as it is lacking in detail. It is one thing to make a speech and say that people are engaged in kickbacks and this and that and the other thing; it is something else to say that we are investigating ABC and we found that they are making kickbacks, or there is indication they are making kickbacks.

Mr. CONYERS. Are you saying that Administrator Sawhill did not report this to the Department of Justice in the appropriate manner.

Mr. KEENEY. No, sir, I am not. I am saying I am not aware of whether he did or not, and I would be glad to check.

Mr. CONYERS. I see.

Let me refer to the *Saber* case.

Mr. KEENEY. Mr. Chairman, one thing we might point out, that the period which you are describing, December 1974, some of the matters I would be willing to guess that he was describing there, some of the conduct, are matters that are now either under investigation or are being subject to prosecution, but that is something we would have to check to see whether or not we are dealing with the same situations.

Mr. CONYERS. I warn you about the limitations problem.

Mr. KEENEY. There would be a limitations problem, but if he was referring to ongoing conduct, it is conceivable that some of those might have been among the matters on which indictments were returned within the last year.

Mr. CONYERS. It is also conceivable that they may be matters in which the Department of Justice had or has no knowledge.

Mr. KEENEY. That is right, it could be.

Mr. CONYERS. And it could be matters under which the limitations period has expired?

Mr. KEENEY. Could be, yes, sir.

Mr. CONYERS. I suppose it goes without saying that these two subcommittees would be interested in determining which of those are the facts in the matter.

Mr. KEENEY. Yes, sir, we will get back to you on that, Mr. Chairman.

Mr. CONYERS. Return with me to October 9, 1977. Federal Energy files show dozens of cases where $42 million in fuel overcharges were identified during a probe after the 1973 Arab oil embargo, but officials acknowledged that they have yet to mount a single prosecution against suspect firms.

In a copyright story Sunday, the St. Petersburg Times traces a 2.5-year Federal probe into the fuel oil dealings of a Houston, Tex. firm, Saber Petroleum Co. and its agent oil broker, Larence C. McBride, more than 18 months ago—this was dated October 9, 1977—energy officials prepared but never issued a violation accusing the firm of illegally inflating fuel prices by $5.6 million, the customers including electric utilities in Pittsburgh and Chicago. The other utilities automatically pass their charges along to their customers. Other dealings listed were with companies in New York and Washington, D.C.

The Federal Energy Administration inquiry began in 1975. The bulk of it was completed by early 1976, but energy officials will not say why the violation notice was not issued; an FEA spokesman in Dallas only told the Times that the case is still under investigation. The Times says that a part of the reason for the delay in recovering alleged overcharges appears to be a parallel and complex investigation of McBride, a wealthy oil broker, who shared hefty profits with Saber.

McBride is under audit by IRS, and has a criminal record including the still-pending murder charge. Saber was named in a January 1976 notice of probable violation issued by FEA regional office in Dallas. Investigators concluded that there was reason to believe the Saber's sale of fuel oil and jet turbine fuel resulted in overcharges by Saber of at least $5.6 million over the period of November 1973 through January 1975 in violation of FEA's price regulations.

Now it is my information that this matter was referred by the FBI from the Department of Energy to the Justice Department to the FBI, from the Department of Justice somewhere in the week of May 24, 1979.

Mr. CARO. Yes.

Mr. MULLEN. Yes; that is correct.

Mr. CONYERS. Are you familiar with this matter?

Mr. MULLEN. Mr. Caro, I believe, is familiar with it.

Mr. HENEHAN. I am familiar, somewhat familiar with it, yes, sir, Mr. Chairman.

Mr. CONYERS. Is anything that I have stated and read to you about the matter incorrect? Is this generally correct?

Mr. HENEHAN. Generally correct, as far as I know. I think you were generally correct.

Mr. CONYERS. That gives us only a few weeks before the expiration of the statute of limitations.

Mr. HENEHAN. Yes; that is correct.

Mr. CONYERS. Are you in a position to comment on how we got to this state of affairs?

Mr. HENEHAN. Well, I think that, generally speaking, one of the problems, this points up a problem with some of these cases, and that is the failure to be able to identify clearcut criminal violations. We have a lot of information there that has to be evaluated to determine if there is a criminal violation and sometimes this can be very difficult.

Mr. CONYERS. I can imagine.

Mr. Keeney, what took it so long to travel from the offices of the Department of Justice to the Bureau of FBI?

Mr. KEENEY. Here is what I have on it, Chairman Conyers. There are two aspects of this matter. They are in different jurisdictions. And the one that you referred to first was referred out to the U.S. attorney's office in Chicago and since that time I think our energy unit headed by Mr. Fishkin has taken it over; is that correct?

Mr. FISHKIN. That is right.

Mr. KEENEY. We are working it right now with the FBI.

Mr. CONYERS. So what took so long?

Mr. KEENEY. Mr. Chairman, the case was referred to the U.S. attorney's office in Chicago in January 1979. It has been our policy with major offices that when they have the capability of handling the case the case is given to them. Because of problems in Chicago in the backup of attorneys in Chicago they did not get to the case for a period of time. We then made the determination in about April that the case would have to be worked by attorneys from the energy unit in Washington.

I might point out that the energy unit has been working the companion case with the FBI in another jurisdiction since January of 1979. That in fact the statute problem is not quite as acute as had been stated here. In fact, the statute in the Pittsburgh aspect of the cases sometime in the future and the statute in Chicago for the transactions that we know about right now is significantly later than 6 weeks from now.

It should also be pointed out that the Chicago aspect of the case was referred incomplete by DOE because of the other jurisdiction aspects. Once they referred the case for one jurisdiction they had to stop their own internal auditing of the company for other matters. So it's quite conceivable that once we go into the company and complete the audit work that we will find there are violations well beyond the original statute date.

Mr. CONYERS. Let me remind you what Ben Civiletti said before us, before the Subcommittee on Crime this year, I am sorry, last year, in connection with our important need to begin to get on top of these cases. He said:

> Criminal investigative agencies, such as the FBI, Postal Inspection Service, or Police Departments, historically have been reactive in their approach on crime. They respond only to specific allegations of wrong-doing and rarely embark on efforts to ferret out such offences on their own initiative.
>
> Nevertheless, the covert nature of white collar illegality requires us to move from a reactive enforcement posture in which we wait for a complaint to be filed by a

victim to a proactive posture in which we affirmatively seek out and pursue the telltale signs of white collar illegality and absent the filing of a formal complaint.

I am pleased that law enforcement agencies throughout the country are readily adopting such a proactive approach.

It seems to me that flies in direct contradiction to everything you have asserted here this morning and this afternoon.

Mr. KEENEY. I hope not, since Mr. Civiletti is my boss.

Mr. CONYERS. I hope not, too, but let's hear you explain what seems to be——

Mr. KEENEY. I don't think the proactive approach can be taken in the energy cases because of their scope and complexity. The productive approach is made to order for the things like a nursing home fraud, a HUD fraud or some particular program with social welfare programs. I really don't think that you can become that proactive.

We have got to have some sort of an occasion of the illegal conduct before we can go rummaging through the files of the oil companies throughout the United States. The task is just too big. We have got to have a lead or in my judgment it would be a tremendous waste of resources.

We could, for instance, ask the FBI to take on the nine major, so-called major oil companies in the United States, go through and audit all their books and transactions looking for violations, but in my judgment that would be a tremendous waste of the FBI's resources.

Mr. CONYERS. But there are regulations in DOE that require the books to be audited.

Mr. KEENEY. That is right, but DOE is the agency to audit and DOE has expertise to audit those books.

Mr. CONYERS. That is what they told us. They said we don't have any criminal capability. As a matter of fact, we wouldn't know a violation of title XVIII except when it hits us in the face. But they are not criminal investigators.

Mr. KEENEY. They are auditors and in the course of an audit they should be able to turn up occasions of criminality.

Mr. CONYERS. Are you satisfied with their performance?

Mr. KEENEY. Mr. Chairman, I am satisfied that the present relationship we have with DOE is a satisfactory one, that we are getting the referrals in reasonable good shape.

Mr. CONYERS. Let me turn here——

Mr. SYNAR. Would the gentleman yield?

Mr. CONYERS. Yes, I will yield.

Mr. SYNAR. I have been sitting here this afternoon and this morning. I think it's very good that DOE is not here because we passed the buck to them all day. You just made a statement which really concerns me, which is supposedly that branch of Government which is in charge of protecting the people and being the people's lawyer, and you talk about not taking a proactive stand because it's complex.

We have serious problems here. From what research we have here—we have two or three cases like the *Saber* case in 1974, the *Commonwealth Edison* case in Chicago, *DuQuesne Lighting* case, all three of which have been brought to our attention. There are

files sitting there on those cases, but no action has been taken on them.

Mr. KEENEY. On some of them. Both of those cases are active.

Mr. SYNAR. They are active?

Mr. KEENEY. Yes, sir.

Mr. SYNAR. When did the statute of limitations run out on them?

Mr. KEENEY. The statute on the case in Pittsburgh has at least a year to run and the statute on the other case has at least several months to run, and probably more.

Mr. SYNAR. Mr. Chairman, I will come back to that in a minute as soon as you finish.

Mr. KEENEY. May I make a comment here with respect to this?

Mr. CONYERS. Please do.

Mr. KEENEY. What is being suggested here is that the enforcement apparatus of the United States, criminal enforcement apparatus, the Criminal Division of the FBI be put on a proactive basis into looking at the energy situation.

What that would encompass is a complete retraining of investigative personnel of the Justice Department, primarily FBI, in the regulations and procedures within the energy industry. It would require a tremendous tooling up and substitution of personnel.

Mr. CONYERS. If we don't do it we are going to continue to be suffering, the American public, to be exploited by the new file of 600 resellers who by most of the testimony here haven't a thing constructive to add except a little profit-taking on their own.

Mr. KEENEY. Hopefully the investigations and prosecutions will have a substantial deterrent effect.

Mr. HENEHAN. Proactive does not give the FBI the right to go out and conduct fishing expeditions. The first step we would take as a proactive approach to the oil cases would be to contact the Department of Energy. They are the source of the problem. They have the responsibility of detection, of policing the industry. We cannot go out and assume that responsibility.

If a citizen comes in and gives us a complaint of specific criminal misconduct involving an energy company, we will initiate an investigation.

Mr. CONYERS. Has that ever happened?

Mr. HENEHAN. Yes, sir; I think——

Mr. CONYERS. How many citizens do you imagine know the laws of the Department of Energy with regard to the oil industry that could know a violation, civil or criminal, if it hit him or her in the face?

Mr. MULLEN. The citizen could be an employee of the company or somebody with knowledge of the industry, perhaps an individual who has been overcharged on his supply of oil or her supply of oil. That could be a citizen; it could be anybody in that case.

Mr. CONYERS. Well, that is hardly a citizen to me, that is a person in the industry with highly technical knowledge and information.

Mr. HENEHAN. Someone outside of the Department of Energy.

Mr. CONYERS. As opposed to an ordinary citizen who wouldn't even know what the regulations were or where to find them or how to understand them to begin with.

We are talking about a highly complex area in which the Department of Justice says it's not our job, even though we are supposed to be proactive, we are proactive in old folks' homes cases, but the big tough jobs, well, a citizen should bring that in and if he can meet the criteria of specificity, and Sawhill apparently doesn't sometimes, then we will check it out, otherwise, what can we do? We can't all devolve upon the poor oil industry and harass them and go through their books constantly.

Mr. MULLEN. We have been proactive in oil industry investigations and in fact have directed an undercover operation against oil industry fraud in the Houston area. This would be a proactive approach.

Mr. SYNAR. What type of fraud?

Mr. MULLEN. The men handling the operation feel we shouldn't go any further with that at this point.

Mr. SYNAR. Are we talking about the same kind of fraud we are having these hearings about?

Mr. CARO. It was a spinoff investigation out of Houston, Tex., as regarding reseller oil.

Mr. SYNAR. So in this case you took it upon yourselves to go around referral of the DOE?

Mr. CARO. No, sir; we didn't.

Mr. SYNAR. They referred it?

Mr. CARO. No, sir; we initially received a referral from the Department of Energy. As Mr. Mullen mentioned early this morning, once we get a referral and if we determine through our investigative resources there are spinoff investigations we don't go to anybody, we do that on our own, and we made this judgment on our own consonant with the U.S. attorney and Government involved in the undercover operations.

Mr. SYNAR. You have the best of both worlds. You either get the referral or if you don't get the referral you have something to fall back on, and you get to pick and choose what you want to, versus the spinoff.

Mr. MULLEN. That is not correct. We don't pick and choose. We saw an opportunity.

Mr. SYNAR. Estimated in your own opinion, your selection, you had to go?

Mr. MULLEN. As investigators, based on our experience, we saw the opportunity to successfully pursue the investigation in this manner. It's a very sensitive technique and we do not take it lightly and it's not one that we used with too much regularity.

Mr. CONYERS. When GAO conducted its audit, this is to the FBI, at Senator Durkin's request, were any of you gentlemen interviewed in connection with that GAO audit on the FBI, Department of Justice, Department of Energy ability to investigate and prosecute oil fraud matters?

Mr. HENEHAN. I believe I was.

Mr. KEENEY. I was, too. If we are talking about the same one, I was, too.

Mr. CONYERS. I know that. I am narrowing this to the FBI for the moment.

Mr. CARO. I believe I also may have been contacted by the folks down in Houston.

Mr. CONYERS. All right. Tell me if this is a correct description of somebody's statement or a general conclusion held by the FBI.

"The FBI is less than satisfied with the results of the Department of Energy auditors in investigating cases and preparing the referrals." True or false?

Mr. HENEHAN. I think that is true.

Mr. CONYERS. In other words, the FBI has to completely reinvestigate some cases, conduct what amounted to a new investigation in others, that in some areas DOE auditors are shunned rather than used on a regular basis?

Mr. CARO. Our experience in Houston, Tex., we have in fact utilized DOE auditors. In fact, there is a DOE auditor that is involved in the strike force at the present time full time. Initially, the audits that were received from DOE were less than adequate.

The Conoco investigation and other investigations that recently were placed under an indictment in the State had extensive reaudits conducted by the FBI but they are getting better, they understand now more what we need. It is an education process.

Fifteen months ago, Congressman, there was not a task force in Houston, Tex. We hadn't received our first indictment.

Mr. CONYERS. You mean the FBI did not have a task force?

Mr. CARO. That is right. The U.S. attorney didn't either. Fifteen months ago we didn't know old oil from new oil. There wasn't an FBI agent in the Bureau who had any expertise whatsoever in oil matters. We had never conducted oil investigations.

Mr. CONYERS. You hadn't conducted oil investigations until rather recently?

Mr. CARO. Until May of 1978.

Mr. CONYERS. OK. Then, is this statement then not correct?

Mr. CARO. I say it basically is correct, sir.

Mr. CONYERS. All right.

Let me ask my colleague from Wisconsin, if he wanted to bring forth a line of questions at this point?

Mr. Sensenbrenner. Yes, I have a couple of questions for Mr. Keeney.

In the Department of Energy's response to the GAO study that was released last week, the Department of Energy criticized the GAO draft recommendations on a memorandum of understanding in that it would create significant complications in proceeding with investigations, specifically parallel civil and criminal proceedings.

Have you encountered any problems with a parallel civil and criminal proceeding since you have been working in conjunction with the Department of Energy?

Mr. KEENEY. We have them all the time. When they refer, like the one agreement we have with the Department of Energy with respect to the handling of referrals, is in the area of what we call the NOPV, notice of probable violation, which they would serve on a company or an individual whom they thought had violated the law and their regulations and what that does, the NOPV triggers certain discovery rights in the subject of investigation.

We have an agreement that we will work it out on a case-by-case basis as to whether or not we are going to object to their filing the NOPV because filing of it would have adverse impact on the criminal investigation. That is the only thing we have with them.

When we talk about memoranda of understanding with the agencies, they take a variety of forms, but the principal type is what we call an automatic declination, which is used for the purpose of appraising the agencies of the type of case in which, absent some extraordinary circumstance, we would not proceed.

For instance, I will give an exaggerated example so you can get an idea of what I am addressing myself to.

We have such an agreement with the Social Security Administration and there are things in there, like if somebody is terminally ill or the amount of money is less than x amount, a fairly low amount, that they need not refer it to us, to save their resources and save ours.

That is, we can't enter into that agreement in the energy field, at least I don't think we can. The other types of agreements we have had are agreements we might have with the military as to who would handle a matter when there is joint jurisdiction of the military and civilian authorities.

As I tried to articulate this morning, we would have a problem in spelling out any sort of guidelines for referral in any more precise language than when they have a substantial occasion of criminal activity they should consult with us, at that time we will determine whether or not we want them to conduct more inquiry or whether or not we think the matter should be referred immediately or put into criminal process.

Mr. SENSENBRENNER. How many NOPV's of the Department of Energy has the Department of Justice objected to?

Mr. KEENEY. Offhand I can name three.

Mr. SENSENBRENNER. Have any criminal prosecutions resulted from the Department of Justice's objecting to any of these three proposed NOPV's?

Mr. KEENEY. One of them, the objection to one of them was based upon the fact there was an indictment filed. The other one was based on the fact we expected an indictment to be filed within, I think, 90 days. And the third one?

Mr. FISHKIN. The third one was in the same category, there was an indictment, whether it's 30 days or 120 days, but it's imminent.

Mr. SENSENBRENNER. Does the Department of Justice have any cooperation with the Department of Energy as the DOE is leading up to its possible filing an NOPV?

Mr. KEENEY. If there is a criminal referral or potential criminal referral the answer is yes. If there isn't they don't have any contact with us on it. It's essentially an administrative proceeding.

Mr. SENSENBRENNER. Mr. Canales seems to have a different opinion. I would like to quote what he said last Wednesday.

> What I have run into is we have talked to corporations or individuals that we did not know they were a target of a criminal investigation by DOE so that creates prolems for us. I am of the opinion that DOE, that local regional DOE should inform the U.S. Office if they had an interest and they are actively pursuing those areas that so and so has been tentatively targeted for criminal investigation.

Mr. KEENEY. I don't know that we have a disagreement there, because I put it in terms of a criminal referral or a potential criminal referral. That is when our interest develops. That is when we would try to make an assessment of the situation to see

whether the administrative discovery, if it's filed, would have an impact adversely on the criminal investigation.

I think Mr. Canales and I are saying the same thing. It's at an earlier stage than maybe I emphasized.

Mr. SENSENBRENNER. Does the Department of Justice make any effort to look over the shoulder of the Department of Energy to make sure that the Department of Energy is referring all of the cases, where there is potential criminal activity, to the Justice Department? In other words, does the Department of Justice do anything to audit the Department of Energy auditors?

Mr. KEENEY. Only to this extent. That if we see a series of certain types of fraudulent conduct coming out of a particular regional office or involving a particular company we might have discussions with them as to whether or not they might look for the same thing in other companies in that region or within other branches of the particular company with which we are concerned.

Mr. SENSENBRENNER. Are you familiar with the *La Gloria Oil & Gas Co.* case?

Mr. KEENEY. It was brought up this morning. That is the only familiarity I have with it.

Mr. SENSENBRENNER. The subcommittee he staffed has received a photocopy of a letter on the letterhead of La Gloria Oil & Gas Co. dated November 7, 1974, and there are four recipients of the letter indicated, and the letter reads as follows:

Gentlemen: The following book transfer. I will emphasize book transfer has been agreed to among all companies concerned and will be effective in October business.

Product number 2 fuel oil volume, 25,000 barrels.

Transfer sequence. La Gloria to Energy Marketing to Fedco, to Gustavson to Conoco to La Gloria.

Location, Tyler, Texas.

Then there are photocopies of what purport to be file copies of letters along this line, one of which tells one of the recipients that upon payment by Fedco I will forward to you your profit of $32,287.50.

Now, that was not investigated by the Department of Justice?

Mr. KEENEY. If it was I am not aware of it.

Do you know anything about it?

Mr. FISHKIN. No, sir.

Mr. SENSENBRENNER. Here we have a specific scheme wherein the ultimate purchaser of the 25,000 barrels of No. 2 fuel oil was to original seller of that 25,000 barrels of No. 2 fuel oil and the Department of Energy auditor's notes on this indicates that for the first three transactions the price was marked up from $250,425 to $315,000 and there were three transactions left with one of the people along the line getting a $32,000 check for profit.

Mr. FISHKIN. I don't understand your question. We didn't receive this and the auditors reached the same conclusions you did with respect to it. I am wondering why he didn't refer it, have it referred to the Department of Justice?

Mr. SENSENBRENNER. That is why I asked the question on whether the Department of Justice was looking over the Department of Energy's shoulder so the cases like this one won't slip through the cracks.

Mr. FISHKIN. Not in that sense. I don't see that we really have the capability of looking over their shoulder in that regard. If an auditor has information like that, Mr. Sensenbrenner, I will repeat what I have said here several times, he has an obligation to report it to his superiors, if he has got evidence of criminal fraud, and if that is evidence of criminal fraud then he should have reported it to us.

He has an understanding of these transactions better than I have, for instance, and if your description of the money going back the way it did then they should have been in consultation with the Department of Justice on it.

Mr. SENSENBRENNER. I have no further questions.

Thank you.

Mr. CONYERS. Mr. Synar.

Mr. SYNAR. Thank you, Mr. Chairman.

I think it is important to state that we all work for the same people, that we are trying to get to the bottom of this and trying to figure out what we can do to hopefully prevent this from happening in the future, and let's go back.

I am from an energy State; I think I understand the energy industry pretty well. I want to just go back to the procedure where the Justice Department and the FBI come into this. Not necessarily to point to a villain or to who is at fault, but how we can try to hopefully improve the system. The way I think we can do it is by looking at the Conoco chart here. We see in 1973 the criminal activity occurred, and then in 1977 Conoco came to the FEA and confessed that they felt like through their own personal investigation that they had committed a crime and then——

Mr. KEENEY. Let's stop there. No, they didn't. They came in and said that in the course of our investigation we have uncovered activity on behalf of, that one of our employees engaged in, and they were taking no corporate responsibility whatsoever, they were keeping it at a relatively low level in the organization.

Mr. SYNAR. What initiated your investigation which brought them in prior to your findings?

Mr. KEENEY. I am sorry, I missed that question.

Mr. SYNAR. How did you all get involved with Conoco?

Mr. KEENEY. We got involved with Conoco when they went to DOE, then there was a referral.

Mr. SYNAR. Who went to DOE?

Mr. KEENEY. Conoco people went to DOE at some point and after that there was a referral based upon a Conoco internal inquiry which suggested that there was improper conduct on the part of an employee in Conoco. Thereafter, when we got the referral, when it went to the U.S. attorney, it was looked into to see whether or not in fact there was anybody else in Conoco other than this employee involved.

Mr. SYNAR. But Conoco was the one who brought it to the attention of DOE?

Mr. KEENEY. They did come in and give very substantial information early.

Mr. SYNAR. DOE did not initiate the investigation first, Conoco came in on its own accord?

Mr. KEENEY. Yes.

Mr. SYNAR. From this and from all the testimony we have gone over here in the last hour and a half, unless someone comes forward, a citizen, an employee, under FEA or DOE in Washington or to the U.S. attorney at the local district level, the Department of Justice and FBI would have no reason to initiate any type of investigation? Am I getting at this correctly?

Mr. KEENEY. We don't initiate investigations in a vacuum.

Mr. SYNAR. OK. So we are saying here that a U.S. attorney and others are pretty much following a referral basis and not taking what we previously called a proactive stance in looking into the oil companies particularly?

Mr. KEENEY. That is a fair statement.

Mr. SYNAR. It amazes me that the Department of Justice and the U.S. attorneys don't read the paper and see that things are going on around them.

Mr. KEENEY. Wait, Mr. Synar, we have already told you that if the FBI, if the Department of Justice, if the U.S. attorney, gets from any source a significant indication of criminality he will look into it. We didn't totally exclude the possibility and there have been, I think Mr. Mullen referred to somewhere there have been some, there are only a few such cases have developed from sources other than a DOE investigator, as you referred to it, a confession by the company.

Mr. SYNAR. Let's go into the——

Mr. HENEHAN. Could I add one point. Proactive is based on information. The proactive approach taken by FBI is based on information received.

Mr. CONYERS. Just a moment. That isn't what Civiletti said, and he wasn't speaking for the FBI.

Mr. HENEHAN. Intelligence.

Mr. CONYERS. Isn't it narrow to now all of a sudden get in the record that proactive means that we are going to refer to matters that someone else brings to our attention?

Mr. HENEHAN. I think you are trying to oversimplify the definition. Proactive means that other than the fact of a citizen coming in and giving us a specific complaint, we become aware through intelligence of a problem that exists in the white-collar crime area. Based on the knowledge of that problem, we may make contacts to see if we can justify or obtain a predication for an FBI investigation. Now this goes a long way from going into a company or going into a business and asking for their records or conducting an audit.

Mr. CONYERS. Has anybody suggested that here today, of all of the two subcommittee members, the membership on two committees, nobody has told you what to do. All we are suggesting is that proactive means you don't wait until the case walks in through the door. Nobody is trying to tell you on what terms you are to audit or what terms you are to call the oil companies in. As a matter of fact, most of us know already that their books are supposed to be regularly audited in this respect anyway, not by you.

Mr. HENEHAN. I think we understand each other now.

Mr. SYNAR. I think that is a very important point. We are not suggesting in any way violating constitutional rights of individuals or corporations by going out and doing illegal searches and seizures. But I don't think there can be any doubt that from the

evidence, from the Anderson column, from the news reports, from everything else, that it was clearly indicated we potentially had a major criminal violation which spread across this country. And yet you come in here and tell us that you have a wonderful working relationship with the Department of Energy, and that Justice and FBI are all working hunky-dory together, and yet we have a total breakdown in the statute of limitations where a number of cases, which we can point to, have gone by the wayside.

We have 43 cases which are presently under investigation, 39 cases, and the question is, are we just scratching the surface or are we looking at something even bigger than that, knowing that the number of resellers has increased sevenfold or eightfold just in the last 4 years. And I am baffled by the fact that we know no more about it than we did back in 1977 when because of the generosity of Conoco Oil coming in and admitting their guilt to DOE, we stumbled into this thing.

Mr. CONYERS. The problem seems to be that we have a Department of Energy enforcement that really isn't capable of criminal investigations, and we have a Department of Justice investigation unit, and I must include the FBI, that is totally unprepared to handle regulatory violations, and so we have this gray area where both of these matters fall between the cracks, and that seems to be the thrust of the GAO report which is only a few days old, fresh off the print.

Mr. SYNAR. Allow me, Mr. Chairman, if I could, to reclaim my time for one final question, something that concerns each one of us as Congressmen and concerns me, from Oklahoma—we have three U.S. attorneys, as you are familiar with, in Oklahoma, and obviously a lot of the action has naturally been happening in the oil-producing States, since there are a number of resellers there.

What has the Justice Department, which I know is in charge of U.S. attorneys—you can't pass that on to DOE—you are in charge of them by your own testimony, what have you done to help support the lack of expertise in the U.S. attorney's office? I would ask the same question of the FBI.

Mr. KEENEY. For one thing, speaking for the Criminal Division, we have actually sent our people out to Oklahoma with expertise to get deeply involved in, at least——

Mr. SYNAR. Are we talking about lawyers, auditors?

Mr. KEENEY. Lawyers. That is all we have in the Criminal Division, are lawyers. They were sent out from the energy unit to work at least one of the cases that we have going in Oklahoma. Rich, do we have more?

Mr. SYNAR. I am not worried particularly about Oklahoma, I am worried about the areas where the hot spots are, whether it be Florida, Texas——

Mr. KEENEY. Oklahoma is a good example. It's an area where we have the expertise right now in Houston, where Tony Canales is and several of his assistants are very knowledgeable, where the FBI has a tremendous cadre of knowledgeable people, and they will elaborate on that, part of it. But we have got some expertise back here in the development and prosecution of these cases and we have been sending them out to places like Oklahoma and we are prepared to send them elsewhere.

Mr. SYNAR. OK.

Mr. MULLEN. We have had agents from 10 to 12 FBI offices travel to Houston on the scene to observe the investigations and gain the expertise. We have scheduled an inservice class at Quantico FBI Academy to train men in investigating oil cases.

Mr. SYNAR. Is that oil or coal?

Mr. MULLEN. Oil. We have just completed the coal and the oil seminar is scheduled for the future.

In Chicago, where we have the current daisy-chain investigation, we have offered the Chicago office to send up agents from Tampa to assist them in that investigation, men with expertise. As Mr. Caro indicated, we have been in this since February of last year and we are still learning, but we are making an effort to spread the expertise around and develop more investigations.

Mr. SYNAR. Thank you, Mr. Chairman.

Mr. CONYERS. Does that mean you are not involved in the *Conoco* case?

Mr. MULLEN. Yes, sir, it was referred to us, I believe, in March of 1978. I said February 1978 so that case came over in March of 1978; is that right?

Mr. CONYERS. Now, the Dingell staff report has been the item that has brought us all to our congressional feet, and we are still anxiously awaiting a reaction from the Department of Justice. Have you received a copy of this report?

Mr. KEENEY. We have responded to one report. Are we talking about the—if we are talking about the December 4, 1978, report entitled, "Rampant White-Collar Crime," we responded.

Mr. CONYERS. Is that the short form or the long form?

Mr. KEENEY. I don't know.

Mr. CONYERS. I understand that the one that runs many, many more pages has not been reacted to by you; is that correct?

Mr. KEENEY. Do we have it, Mr. Chairman?

Mr. CONYERS. We can make it available to you. I know where you can get a copy before you leave this hearing. I think it is very important that we get a reaction to that study because that study has alerted millions of people in this country, not to say the least a number of Members of Congress, and as the basis on which these hearings between the two subcommittees are going forward.

Now the bottom line of all this is the need for more resources and for better procedures between two very large agencies in the Government. Can the Justice Department and FBI anticipate an acceleration of oil fraud referrals under the present circumstances? Is there going to be an increase in investigations and prosecutions?

Mr. MULLEN. I would anticipate an increase as long as we have the shortage of oil, yes, sir.

Mr. CONYERS. Because——

Mr. KEENEY. As far as resources, Mr. Congressman, it's not a problem of numbers right now, it is a problem of expertise.

Mr. CONYERS. Because the shortage of oil is what fuels the criminal and fraudulent activities and conspiracies that we are confronted with, isn't it?

Mr. KEENEY. I anticipate an increase, yes, sir.

Mr. CONYERS. Can I ask you the same question, Mr. Fishkin, I assume the Department of Justice is all in concurrence with that response?

Mr. KEENEY. We are, and that reflects substantially what I said in my statement, Mr. Conyers, we can handle it now. If it gets worse we are going to have problems.

Mr. CONYERS. I am sorry——

Mr. KEENEY. We can handle it at the current rate. If the energy crisis continues and the incidence of fraud continues as it has been continuing, then we will have to have other resources.

Mr. CONYERS. That would mean the Congress would have to re-examine your investigative and prosecutorial capabilities?

Mr. KEENEY. Yes, sir. You would have to determine whether we should get the resources or not, and that would go into your thinking, I would suppose.

Mr. CONYERS. Now, does DOE, a DOE administrative subpena have any application with reference to criminal investigations?

Mr. FISHKIN. Mr. Chairman, the DOE is not doing criminal investigations. DOE is doing audits, audits may turn up any anomalies and/or violations of their own regulations. Once they find a violation of regulations, if it looks like there is an indication of willfulness, then they start what they call a special investigation. If they find evidence indicating that there is a possibility or probability of willfulness, then they refer it at that point.

Mr. CONYERS. Well, if they don't have a criminal subpena power, how in God's name can they get to the books to find out if the crime had been committed? What we are saying is that they have to have administrative subpena capability to get a lead on serious crimes, which put them in an incredible position.

Mr. FISHKIN. They have it. What they are doing is——

Mr. CONYERS. They have what?

Mr. FISHKIN. They have subpena power.

Mr. CONYERS. What kind?

Mr. FISHKIN. Mr. Chairman, what DOE is looking for——

Mr. CONYERS. Do they have criminal subpena power?

Mr. FISHKIN. May I answer the question?

Mr. CONYERS. Yes.

Mr. FISHKIN. What DOE is looking for is violations of their regulations. Once they define the violation of their regulations, if that violation appears to be willful, then they stop and turn it over to the Department of Justice. That is the threshold determination of whether or not a crime is committed.

Mr. DINGELL. Would you yield?

Mr. CONYERS. I would like to get a response from the witness. You have not answered the question, sir.

Mr. FISHKIN. They have subpena power.

Mr. CONYERS. That is not the question. The question is whether they have criminal subpena power as distinguished from the administrative subpena power. This is a rather fundamental area of criminal law. You are aware of the difference?

Mr. FISHKIN. DOE does not have the authority to conduct criminal investigations.

Mr. CONYERS. What is the answer to the question?

All right, I will start from the beginning. You are indicating puzzlement.

Mr. VOLKMER. Would you yield?

Mr. CONYERS. I can't.

Mr. VOLKMER. You have to.

Mr. CONYERS. I don't have to and I will not.

Just a moment. You indicated to me that the DOE has subpena power. I am trying to determine from you whether they have criminal subpena power and you are confused about the question, I presume, that is why you haven't been able to answer, is that right, which means you may have a difference in your mind about what administrative subpena power carries with it as opposed to criminal power?

Mr. FISHKIN. They have administrative subpena power. They do not have criminal.

Mr. CONYERS. Thank you very much. Now I yield to the chairman of the subcommittee.

Mr. DINGELL. Mr. Chairman, earlier you discussed the question of DOE's ability to get information. First of all, the minute that you folks have a criminal proceeding pending, DOE's capability to get information under civil process and under its other processes declines very sharply because you have a criminal proceeding pending and you then have the problem of parallel proceedings; isn't that so?

Mr. FISHKIN. That is correct.

Mr. DINGELL. So, for all intents and purposes DOE's ability to investigate pricing matters that are reasonably concurrent in time with your investigation falls almost to zero, at the time that you folks have initiated a criminal process.

Isn't that a fact?

Mr. KEENEY. It is a real problem, Mr. Dingell.

Mr. DINGELL. What it means is they become almost incapable of carrying out their responsibilities.

Mr. KEENEY. Well, they can continue, but they can continue with civil aspects. We would take over the criminal aspects. If the related civil aspects—what we would try to do—and that is why I suggested consultation with the assistant U.S. attorney—is to insulate the people who are doing the civil from the people doing the criminal, so that they can go on the two tracks. It is a problem. There is no question about it.

Mr. DINGELL. But you have also indicated that under the practices of the two agencies, DOE and the Department of Justice, that the DOE field people cannot either talk to witnesses nor can they deal with your people, except through the Washington office of DOE and Department of Justice, and then back down.

Mr. KEENEY. No, sir, that is a misunderstanding. Maybe I haven't made it clear. One, the referral goes out in the field and we have a criminal inquiry being conducted, then the DOE people are in direct communication with the assistant U.S. attorney, with the FBI. There is a working relationship there.

Mr. DINGELL. On all matters, or just on the matters that are the subject of the criminal——

Mr. KEENEY. Just the matter that is the subject of the criminal inquiry.

Now, if there is a parallel civil proceeding, there would be an attempt made to insulate the people handling the separate civil proceeding in the event that there might be an overlap.

Mr. DINGELL. But on matters other than those matters on which the criminal investigation goes forward, they cannot talk to your local people, can they?

Mr. KEENEY. That is right, because we don't have anything. We don't have anything with respect to the latter matter.

Mr. CONYERS. Well, then, the GAO report is correct when it made the point that is now being made by the chairman of the Subcommittee on Energy and Power; namely, that we have this awkward referral process where the central offices in Washington really preclude the local operators from getting together.

Mr. KEENEY. No, sir, Mr. Conyers. Mr. Dingell and I were off on a situation where you have a fragmented or splintered thing. When a referral goes from the Department of Justice to the U.S. attorney, the DOE people who have familiarity with that matter are perfectly free to work closely with the U.S. attorney and with the FBI.

What we are talking about—what Mr. Dingell and I were talking about is where there may be a related but somehow separate civil matter involving the same company. In that situation, because of the parallel proceedings problems that would arise, it would be desirable if not essential, that we insulate the civil people from the criminal proceedings.

So we don't have a violation of—misuse of grand jury material on the one hand, or we don't have the use of civil proceedings or administrative proceedings to develop a criminal case on the other hand, after the referral.

Mr. DINGELL. Mr. Chairman, if you would permit me—on matters which are not within the scope of that criminal proceeding, DOE's people still can't talk to your local folks.

Mr. KEENEY. That is right, but there is really no need to, if it is not within the scope of the criminal proceeding.

Mr. DINGELL. But they are also foreclosed from dealing with any matter which is reasonably contemporary in time, with the matters which are related to the criminal process, in which you folks are engaged.

Mr. KEENEY. Well, if there was an indication it was related, I would assume that the matter was turned over to us.

Mr. DINGELL. Which might be involved in the same time frame. When you have a company like Gulf, you might have one criminal event going on in one area—I don't mean to say that Gulf engages in criminal activities, I am just using it as an example of a major oil company—and there would be a whole series of other matters that might be taking place in the same geographic area or in a wholy different geographic area on which their people would be precluded (1) from investigation, as part of their civil process, and (2) would be precluded from talking to your people working in the field.

Mr. KEENEY. I think this is coming through as a straightjacketed operation, which it is not. Once that criminal referral goes out into the field and DOE has any information indicating that they might

be related to or connected with the criminal referral, they are perfectly free to bring that to the attention of the——

Mr. DINGELL. I am not referring to matters which are related to the criminal matters at all. I am talking about other matters contemporary with, but unrelated thereto. On those matters your people and DOE's people in the field cannot talk to each other, except through the Washington office.

DOE's people are foreclosed, because of your doctrine of parallelism, from going after matters of information which might be of urgent need to them, in connection with their civil investigatory matters.

Mr. KEENEY. Mr. Dingell, it is not really our doctrine, as you know. It is a legal doctrine——

Mr. DINGELL. I can't believe you would have such difficulty in understanding me. I really can't.

Mr. KEENEY. I don't think we are misunderstanding each other now, sir. You say our parallel proceeding doctrine. I think it is a legal doctrine, the parallel proceeding, which is imposed by the courts. We have a very narrow line to walk, so that we are not misusing criminal process or misusing civil process.

Mr. DINGELL. You know, if we write a report on this, I am going to be compelled to observe that it is very difficult to have you understand my questions, and I have to arrive at my own conclusions because you cannot respond.

Now, that distresses me greatly. I hope that it will distress you equally in due course.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Keeney, would you refer to page 58 of the document entitled "Comptroller General Report to the Congress, Improvements Needed in the Enforcement of Crude Oil Reseller Prices."

Mr. KEENEY. We have not received that document.

Mr. CONYERS. You have not received that document? You have made comments that are printed in this document.

Mr. KEENEY. We made comments on an earlier draft, Mr. Chairman. I have not. Have you? We have not seen it.

Mr. CONYERS. Wait a minute. Mr. Fishkin, are you alleging that you have never seen this document?

Mr. FISHKIN. No, I have a copy.

Mr. CONYERS. You have copies.

Mr. FISHKIN. We got it at the end of last week.

Mr. CONYERS. You have copies, all right.

Mr. FISHKIN. A copy.

Mr. CONYERS. So Mr. Keeney, it did not come to your attention?

Mr. KEENEY. I just received one from the young lady, thank you.

Mr. CONYERS. What about the members of the FBI at the table? Have you ever seen this document before?

Mr. MULLEN. I have not read this document.

Mr. CONYERS. Have you seen it?

Mr. MULLEN. No, sir.

Mr. CONYERS. You remember you were interviewed by members from GAO in compiling it.

Mr. MULLEN. I was not interviewed, sir. Mr. Caro and Mr. Henehan were interviewed.

Mr. CONYERS. I see. All right, let's turn to this document. For the first time, page 58, please.

Mr. MULLEN. Mr. Congressman, I did have a brief discussion with your aides regarding the document in their office.

Mr. CONYERS. Right, but you were not interviewed by any of the GAO personnel.

Mr. MULLEN. No, sir.

Mr. CONYERS. All right. Appendix 2, page 58. "GAO recommendations for expansion of informal communication channels to provide for discussion between U.S. attorneys and DOE regional offices.

"During the period of informal DOE–DOJ communication, and up to the referral of a matter to a specific U.S. attorney"—precisely what Mr. Dingell is referring to—"for possible criminal prosecution, there is no informal communication between DOE regional offices and local U.S. attorneys.

"Department of Justice specifically requested that there be none for the reasons stated below." We spent a paragraph indicating the policy. You are familiar with this?

Mr. KEENEY. I am familiar with it. I was interviewed in connection with this.

Mr. CONYERS. Now, will you square the statement that was given on behalf of the Department of Justice to this GAO account, with the constant references that you and Mr. Fishkin have made here this morning and afternoon about the close coordination between DOE and the Department of Justice?

Mr. KEENEY. Yes, sir. The coordination is when DOE comes up with something that they think may be criminal. They consult with us. A decision is made as to whether or not it should be referred immediately.

Mr. CONYERS. They consult with who?

Mr. KEENEY. They consult with us—Mr. Fishkin, Mr. Barnes, myself.

Mr. CONYERS. You mean DOE auditors and investigators in the field consult with you?

Mr. KEENEY. No, the DOE people in Washington consult with us, when they get a report on it.

Mr. CONYERS. In other words, the DOE enforcement people have to report to central DOE in Washington.

Mr. KEENEY. Yes, sir.

Mr. CONYERS. And then central DOE in Washington refers to central DOJ in Washington.

Mr. KEENEY. That is right.

Mr. CONYERS. All right. Do you recall earlier in the colloquy we were trying to establish that that is the pattern that is indeed followed?

Mr. KEENEY. I don't think I ever disagreed with it. The conversation Mr. Dingell and I were having, at least as I understood it, was after there is a criminal referral in the same company or entity being investigated civilly, by the auditors in DOE, no contact is—contact is discouraged between those civil auditors and the people who are working the criminal referral in the U.S. attorney's office.

Mr. CONYERS. Well, it seems to me that the prereferral period is the key period. That is where the delay always creeps in. Now we have on the record that DOE, with administrative subpena power,

with no criminal subpena power, is supposed to find crimes that they refer to the Department of Energy in Washington, who then refer them over to central Department of Justice, and then you determine whether something ought to move on it.

Then you specifically emphasize that there is no informal communication between DOE regional office and the local U.S. attorneys. As a matter of fact, there is not even a memorandum of understanding on criminal matters between DOE and DOJ, is that not correct?

Mr. KEENEY. That is correct.

Mr. CONYERS. But there is on civil referrals; isn't that correct? The same kinds of matters that are referred to the civil side of the Department of Justice—does there not exist a memorandum?

Mr. FISHKIN. Mr. Chairman, I believe the memorandum of understanding between the Civil Division and DOE refers to DOE's independent authority in certain circumstances to handle their own litigation in the Federal district courts.

Mr. CONYERS. So there is a memorandum of understanding. I have not seen it, so I cannot tell you what is in it. The fact of the matter is it exists on the civil side. It does not exist on the criminal side because of your requirements, and has been stated in the GAO report.

That is the way you want it.

Mr. KEENEY. That is the way we want it, sir. That is the way we think is the most effective to handle the cases. We encourage—once the matter goes back into the U.S. attorney's office, we encourage a continuing dialog with the DOE auditors, who are familiar with the criminal development.

Mr. DINGELL. Mr. Chairman?

Mr. CONYERS. Proceed.

Mr. DINGELL. Could I raise a question here that I think is very directly related to the points you are discussing.

Mr. Henehan, didn't you observe to members of the staffs of the two committees that you are finding DOE's work, for example, on the *Conoco* case, to be inadequate?

Mr. HENEHAN. Yes, we had complaints from the field that they had to redo the audits.

Mr. DINGELL. Mr. Canales made a similar complaint. Now, DOE cannot go to your people in the field, can they? DOE's field people cannot go to your field people in connection with those matters and vice versa; isn't that right?

Mr. HENEHAN. Our people can't go to DOE's people?

Mr. DINGELL. Not while DOE's people are engaged simply in their investigation. Neither your people can go to DOE's people——

Mr. HENEHAN. I think you are speaking of a time prior to a referral.

Mr. DINGELL. That is right. They can't, can they?

Mr. HENEHAN. I am not aware that they can't.

Mr. DINGELL. They cannot. Maybe Mr. Keeney can answer that.

Mr. KEENEY. I don't think there is any proscription on that, Mr. Dingell.

Mr. DINGELL. Well, prior to the referral, neither your field people nor DOE's field people can go to the other agency's field people, can they?

Mr. KEENEY. No. What we have is prior to the referral we don't want the DOE referral people going to U.S. attorneys. We want it to come through, to refine it through their national office and our national office to see whether or not it is the type of case which we can put resources in.

Mr. DINGELL. I am not unaware of that. I am just trying to get you to acknowledge the point I make. Is it unduly burdensome?

Mr. MULLEN. Mr. Dingell, on behalf of the FBI we have no restriction on our men going to DOE, on behalf of the FBI.

Mr. DINGELL. What?

Mr. MULLEN. No restriction on our men going to DOE, or talking to their agents. Is that the question? We have no restriction at all.

Mr. DINGELL. But they can't go to the U.S. attorney folks.

Mr. KEENEY. The DOE people cannot go to the U.S. attorneys. The FBI people can go to DOE.

Mr. DINGELL. Can your people go to DOE's field people?

Mr. KEENEY. The FBI can.

Mr. DINGELL. Can your attorneys?

Mr. KEENEY. If it is indicated, they could, and they would get back to us.

Mr. DINGELL. So you have a situation where your folks are telling you and us that DOE doesn't prepare their cases well and yet DOE cannot come to your folks to ask guidance in the handling of its investigations?

Mr. KEENEY. Well, there has been some comment about the DOE preparation. In my statement, for instance, we have noted the fact that there has been work with DOE on referrals and that we made substantial progress, and we are satisfied with the type of referral that we are getting now.

Mr. DINGELL. Well, excepting that when DOE field people want to find out whether their work is adequate, to get the views of the Department of Justice folks in the field, they have got to refer the question up to the Department of Energy in Washington, and have it referred laterally across to the persons of equal dignity in the Department of Justice, back down to the Department of Justice field people; namely, your U.S. attorneys.

Then the answer comes back up through the same chain, going the opposite direction. Isn't that a fact?

Mr. KEENEY. Yes, that is pretty much it.

Mr. DINGELL. Is that good administration? Does that provide for expeditious processing of questions and concerns by the DOE people?

Mr. KEENEY. The questions are a matter of telephone calls.

Mr. DINGELL. A matter of a telephone call?

Mr. KEENEY. Yes.

Mr. DINGELL. So the telephone call goes to Washington, then goes to the Department of Justice, telephone call goes back down to the people in the same Federal building in Houston.

Mr. KEENEY. Some of them come directly to us, Mr. Dingell.

Mr. DINGELL. How long does that take?

Mr. KEENEY. Ten minutes, maybe.

Mr. DINGELL. And how long does it take if it is a complex question as far as writing, given the U.S. Post Office?

Mr. KEENEY. I don't know that we are getting any in writing. It is usually oral questions, which our people dealing in it feel are able to answer. That is the reason we sent up the centralization, Mr. Dingell, because we don't want the DOE six regions going to individual U.S. attorneys, assistant U.S. attorneys, who never heard of an energy case, and trying to get help with respect to an energy investigation. We think this is the way to expedite it.

Mr. DINGELL. Only a Government bureaucrat could conceive of this as expediting.

Mr. MULLEN. Mr. Dingell, if I may, there is no restriction on the part of the FBI, on having DOE officials contact our agents, and ask what does this look like, what do you think. We have no restrictions.

Mr. DINGELL. I would say thank God for the FBI.

Mr. MULLEN. There may be some on the part of DOE, I don't know.

Mr. VOLKMER. Mr. Chairman?

Mr. CONYERS. Mr. Volkmer.

Mr. VOLKMER. Just to continue that—you have never done it. You say there is no restriction on the FBI working with DOE?

Mr. MULLEN. None at all.

Mr. VOLKMER. But you haven't done it.

Mr. MULLEN. Yes, we have. We work closely with them in Texas. We haven't gone seeking information. But if they wanted to talk over a case——

Mr. VOLKMER. Prior to, you have not, have you?

Mr. CARO. Prior to receiving a formal referral, yes, sir, we have.

Mr. VOLKMER. You have worked with them on investigations?

Mr. CARO. You mean work a joint investigation? No, sir. We have solicited information from them. We were aware informally that a referral was coming over. We discussed the matter with them. We got the wheels in motion.

It is not a complex matter. This referral business I think is out of proportion. It isn't a bureaucratic haze where it takes months. I realize—you know, you are going to throw it right back at us, the Conoco situation and others. But my experience.

Mr. VOLKMER. I am not going to throw anything back at you.

Mr. CARO. The experience in Houston is that the referral system works. Mr. Fishkin and others back here in Washington have a specific expertise. If DOE went to an assistant U.S. attorney, even in Houston, that did not have an expertise in oil, he could be sent down the primrose path.

If DOE in one of their regional offices refers an investigation to Mr. Fishkin, Mr. Fishkin is on the phone with Mr. Canales immediately. There is an informal dialog. The matter is under investigation in the matter of a week. It is not a bureaucratic problem.

One thing—Mr. Fishkin has more expertise in this area, he and Mr. Canales, than probably any two prosecutors in the United States.

Mr. VOLKMER. I don't argue that.

Mr. CARO. And I want, as a Bureau official, I want my investigators to work with the people that have the expertise.

Mr. VOLKMER. I won't argue that. But still, what concerns me, and I think gives some concern to the other members of the com-

mittee, is the fact that we have got additional investigations being conducted by people who really are not trained as well as perhaps they could be in the criminal investigation work.

Mr. CARO. Sir, the confusion, I think, is that we are talking about auditors from the Department of Energy who are basically civil oriented. And you are talking about the FBI auditors, that are working on a title 18 framework.

Mr. VOLKMER. Yes.

Mr. CARO. There is not that much of a problem. The problem we had initially with the DOE auditors were that they were not aware of our needs. The DOE audits are getting better all the time. We are doing less and less recheck and reaudit.

Mr. VOLKMER. Within the area that you are working right now?

Mr. CARO. Yes, sir.

Mr. VOLKMER. That is in the Houston area?

Mr. CARO. Yes, sir.

Mr. VOLKMER. But there are other areas of this country.

Mr. CARO. All the areas that the Bureau has an interest in, sir, these areas and these agents have received on-the-job training in Houston.

Mr. VOLKMER. All right. At least you are working with DOE, then, as far as—at least somebody I hope is, so that the DOE auditors know what to look for at the time they look. Is that correct?

Mr. MULLEN. Yes, sir. The report as such, as Mr. Caro indicated, even though the matter is referred to Washington for ultimate referral, we are usually aware it is coming, and so we can prepare and get geared up and know what resources we will be using on these cases.

Mr. VOLKMER. But of all those investigations that are ongoing now, the reseller cases, that are ongoing right now, being initiated, even maybe today and tomorrow, one or two, by DOE, you don't know anything about them? Right now you don't know anything about them?

Mr. MULLEN. That is right. The 70 referred to earlier.

Mr. VOLKMER. Neither does the Department of Justice.

Mr. MULLEN. I don't. But our agents in the field may. I don't know.

Mr. VOLKMER. I guarantee you, it doesn't look like you do.

Mr. FISHKIN. Congressman—the matters being worked by DOE, we get a monthly update giving us the status of those investigations. We are in constant communication with them, prereferral.

I might also point out that in certain of the cases where expedition is necessary, we have turned up violations, had them referred, and had them to the U.S. attorney's office within a week of the time the violation occurred.

Mr. VOLKMER. Within a week of the time the violation occurred?

Mr. FISHKIN. Yes, sir.

Now, these might be small——

Mr. VOLKMER. I am talking about reseller cases.

Mr. FISHKIN. These are not reseller cases. Reseller cases take a significantly longer time to develop, both from the audit standpoint, up to referral, and then from the investigations standpoint from referral.

Mr. VOLKMER. That is what I am saying. You don't have the slightest idea what cases are being investigated and what resellers are being investigated right now?

Mr. FISHKIN. I do know which ones are special investigations, which is the classification DOE gives to an indication they get in their audit that something is not right. Once they make that determination, that it looks like there may be criminal conduct, and they make it a special investigation, and I do know from the time they make them special investigations which ones are being worked.

Mr. VOLKMER. How many times have you worked—talking about hours or days—have you worked with the special group investigating resellers from DOE?

Mr. FISHKIN. Well, if you are talking about the civil people who are investigating them——

Mr. VOLKMER. I am talking about the audit group looking at it from the criminal end, supposedly.

Mr. FISHKIN. All right.

Mr. VOLKMER. In which they have no part in investigating it, as you just said.

Mr. FISHKIN. I think there is a misconception. There is an audit group in DOE looking at all resellers. If they make a determination that there may be criminal conduct inside that reseller, then it becomes what they call a special investigation, where they bring in——

Mr. VOLKMER. Is that the one in New Orleans?

Mr. FISHKIN. No, sir. That is the standard audit of resellers.

Mr. VOLKMER. I am talking about the group out in New Orleans.

Mr. FISHKIN. To my understanding, that is the group in New Orleans. They are doing standard civil audits. When in the course of their audit they discover conduct which looks like it may be criminal, or could be criminal, then they call in their national office of special investigations and they assign to that team an additional auditor and attorney who have experience in looking at criminal types of matters, to make the determination whether in fact there is a criminal violation.

When they make that determination, then they refer it to us. The moment the special investigation gets into the case, we are apprised of it on a monthly basis, as to what cases they are looking at.

Mr. VOLKMER. Can you tell me right now how many have been referred to you on reseller cases in the last month, the month of May?

Mr. FISHKIN. How many reseller cases?

Mr. VOLKMER. Yes.

Mr. FISHKIN. One.

Mr. VOLKMER. Only one?

Mr. FISHKIN. That is correct. For conduct in 1976, 1977, and 1978.

Mr. VOLKMER. How many in the month of April?

Mr. FISHKIN. One that we were already into.

Mr. VOLKMER. Only one new case?

Mr. FISHKIN. Reseller case. Crude oil reseller case.

Mr. VOLKMER. Crude oil reseller case.

Mr. FISHKIN. We are getting on average from DOE three or four cases a month of each type.

Mr. VOLKMER. Now, that includes gas stations?

Mr. FISHKIN. It has in the last couple of weeks, because of problems in certain States.

Mr. CONYERS. Our staff says there is only one crude oil reseller referral since November. There are none since November. True?

Mr. FISHKIN. There was one in May. There is one coming up for trial next week.

Mr. CONYERS. Which one on your referral sheets here—which cases are you referring to?

Mr. FISHKIN. No. 43.

Mr. VOLKMER. Before you go on with that, I would like to ask another one. How many daisy chains? Any daisy chain referrals?

Mr. FISHKIN. We have been getting a regular stream of daisy chain cases. I don't know exactly how many were referred in each particular month. The majority of the cases that we are getting could be classified as daisy chain cases.

Mr. VOLKMER. The majority are daisy chains?

Mr. FISHKIN. Yes, sir.

Mr. VOLKMER. They are not actually flipping the price, or changing the oil, old to new.

Mr. FISHKIN. Well, you can have that conduct also in a high-tier low-tier situation. Once it has been flipped from old to new, then it can become a daisy chain on top of that.

Mr. VOLKMER. I know that. But I am talking about the actual flipping.

Mr. FISHKIN. That is the crude oil reseller case.

Mr. VOLKMER. Which you don't hardly have any of, and which we have a proliferation of a great many people involved in.

Mr. FISHKIN. I am sorry, I didn't understand.

Mr. VOLKMER. We do have since 1973 a great many more people involved in reselling. And yet we only end up with, other than the cases that have been disposed of, like in the month of May, for 1976, 1977, 1978, DOE has only turned over to you one case.

Mr. FISHKIN. So far. They have active audits going in a lot of cases, sir.

Mr. VOLKMER. Maybe I will wait and talk to you again in June or July.

I either have to be led to believe that the resellers are needed, and they are not doing anything wrong, and everything they are doing is all right, or else somebody isn't doing their job.

Mr. FISHKIN. Congressmen, they are not easy cases to turn up. There have to be indications of fraud. They usually involve proof of payback, proof of wired deals, if you will, lack of arm's-length deals.

Mr. VOLKMER. You only have so much old oil. You have so much new. You sell some of both. And it looks a little suspicious to me—if you constantly sold more new than you had, and less old than you had. That looks a little suspicious to me.

Mr. FISHKIN. I agree with you. A lot of the old oil is becoming stripper, which makes it new oil. We are not saying there is not fraud out there, Congressman.

Mr. VOLKMER. Thank you.

Thank you, Mr. Chairman.

Mr. CONYERS. Mr. Fishkin, you were correct that there was one crude oil reseller case, No. 43, brought in May 23, 1979. Now, is that the only crude oil case since last November?

Mr. FISHKIN. There is another case that is going to trial next week, Mr. Conyers.

Mr. CONYERS. It was before last November, then?

Mr. FISHKIN. That it was referred? No, sir, it was developed in Oklahoma, within the last few months.

Mr. CONYERS. Well—are you talking about No. 6?

Mr. FISHKIN. No. 6.

Mr. CONYERS. Right. So we have got two. Is that correct?

Mr. FISHKIN. Two from referrals. There are a lot of cases being developed from the old referrals in Houston, that are spinoff cases. There are other cases being developed from spinoffs of the Oklahoma cases.

Mr. CONYERS. Well, these are in the 45 that you recited earlier?

Mr. FISHKIN. No. some of them would be. Many of them would be in addition to that. These are not cases referred by the Department of Energy. These are cases that are spinning off of cases referred by the Department of Energy.

Mr. CONYERS. All right. Would you provide our subcommittees with these monthly updates as you have begun to, beginning in July?

Mr. FISHKIN. If you are talking about a monthly update, we don't prepare this on a monthly basis. The monthly update I am talking about is something that comes to us from the Department of Energy telling us what special investigations they have underway and the status of those investigations.

Mr. CONYERS. Well, how can we work out a program where we can measure these things? I mean, could you have one person in your shop do it on a monthly basis?

Mr. FISHKIN. We could make a list similar to this, on a monthly basis, showing you which new cases are coming in, if that would be of help.

Mr. CONYERS. Right. Including changes of status. We can work out some reporting mechanism, if that is agreeable with you and Mr. Keeney.

Let me ask you now—Mr. Keeney, you have not tried any of these matters; have you?

Mr. KEENEY. No, sir.

Mr. CONYERS. Mr. Fishkin, have you?

Mr. FISHKIN. Only one has gone to trial. I am going to try one next week.

Mr. CONYERS. Well, there hasn't been any—any of these matters ever brought to trial before?

Mr. FISHKIN. One, in Florida, so far.

Mr. CONYERS. And you did not try that?

Mr. FISHKIN. No, sir.

Mr. CONYERS. Under what circumstances did you gain your expertise in this area?

Mr. FISHKIN. Fraud in the energy area is like fraud in any other area—the commodity is different.

Mr. CONYERS. Well, there isn't much difference.

Mr. FISHKIN. Between fraud—it is fraud. I have been a trial lawyer for the last 14 years.

Mr. CONYERS. And you do not perceive to be much difference in handling the trial of an oil fraud as opposed to any of the numerous other kinds of criminal frauds?

Mr. KEENEY. Is that to me?

Mr. CONYERS. No; it is to Mr. Fishkin still.

Mr. FISHKIN. There is a distinction. There is a familiarity with the regulations, a familiarity with the industry that is necessary. But this is the kind of familiarity you have to have to try any kind of case.

Mr. CONYERS. Well, that is precisely the opposite information than has been brought to our attention by a number of other lawyers before both these committees, that we need a great deal of specialty. As a matter of fact, that there is a marked reluctance to leave these cases in some U.S. attorney's jurisdiction because they specifically do not have oil experience as opposed to fraud or criminal conspiracy, trial experience generally.

Mr. FISHKIN. The problem is the experience in fraud, and white-collar crime cases, not so much the problem with energy-related white-collar crime cases.

Mr. KEENEY. Mr. Conyers——

Mr. CONYERS. That is a very revealing statement, because it contradicts everything that we have been told by people in the field.

Mr. KEENEY. I would add to that, that once the case is developed, and you have got the indictment, a good trial lawyer who can try fraud cases, has tried fraud cases, will be able to try it. The need for the expertise is at the earlier stage, when you are ferreting out the fraud, and then putting the fraud into a prosecutable charge.

Mr. CONYERS. Well, my final question, Mr. Keeney, is where would you recommend the Congress, particularly these two subcommittees, go to shed light on the question of the magnitude of the fraud, criminal conspiracies, and other illegal activities going on in the oil industry, since you cannot provide it?

Mr. KEENEY. Well, the only thing we can do is project, based upon what we received to date.

Mr. CONYERS. Yes. Well, is there someplace we can go, to the Attorney General of the United States, to the Secretary of Energy, to the Director of the FBI, to the head of the CIA, the President of the United States? Could you refer us?

Mr. KEENEY. It would have to be made by somebody with an extensive knowledge of the industry, and those people are in DOE.

Mr. CONYERS. Well, DOE is telling us rather pathetically they are in no position to do it, because they do not have criminal investigatory background. These are crimes. And the DOE personnel have rather plaintively explained to us that they are in the energy business, not the criminal law business. And so they suggested that we go elsewhere. And that is why I cannot go back to them and ask them to give me estimates on criminal activity. Their people in charge of it do not even have criminal trial or criminal justice backgrounds.

Mr. KEENEY. On the other hand, Mr. Chairman, you are asking us to do something, or you are suggesting we might be able to do it,

that all we can do would be project on the basis of what we see, the number of referrals, the amount of money that is involved in them. And the situations we are dealing with may be aberrations insofar as the total operation of this gigantic industry is concerned.

Mr. CONYERS. Well, that is what the Department of Justice does when we predict street crime, and purse snatchings, and murders. We have a common basis of experience, and reporting, and prognostications that all go in, and we submit some kind of estimation as to the magnitude of the problem.

Here we are having two huge agencies both suggest to the Congress that neither of them has the responsibility, and ultimately I suppose it rests upon the shoulders of half a dozen staff men, to go out here and determine how serious a problem is that the American public is enormously enraged about. As a matter of fact, most of the public does not believe that there is a legitimate oil shortage, as you recall from the Gallup polls, which as translated to me means that they do not believe that it is anything but a managed shortage within the industry. Which means that there may be criminal activities, certainly unethical violations of a DOE law, and our own criminal code, that are involved. And you are now telling the Energy Subcommittee and the Crime Subcommittee that the Department of Justice is not the appropriate place. And I respectfully have to disagree with you, and ask the Attorney General of the United States and the Secretary of Energy if they can speak more dispositively to this question. I think this is a very unsatisfactory response in terms of our need to gain more information.

Mr. KEENEY. Mr. Chairman, you are asking criminal prosecutors, criminal investigators, to make a judgment that involves all sorts of economic and international political determinations which I for one am not competent to make, and I would not like to try it.

Mr. CONYERS. Well, do you have any idea—and you must recall my original phrasing of the question was not to ask you to do it—I asked if you knew where we might go to find out.

Mr. KEENEY. Well, it depends on what you are looking for. If you are looking for the extent to which fraud is causing an increase in the price of oil, you look at one thing. If you are looking at the extent to which the activities of the OPEC nations and certain problems we have with regulation in the United States are involved, it is something entirely different. But we have no competence in any area except investigation and prosecution of criminal matters. And we can only—the only information we have is the information that has been developed in the course of those 39 or so criminal investigations.

Mr. CONYERS. Well, there has only been one prosecution.

Mr. KEENEY. Yes. But there are going to be more.

Mr. CONYERS. Since 1973.

Mr. KEENEY. There are going to be more, Mr. Conyers. The flow of cases is coming through at a much steadier rate.

Mr. CONYERS. All right.

Mr. MULLEN. It may be, Mr. Conyers, as we develop more expertise, and we have more and more prosecutions, we will have some statistics to point to in the future with regard to the depth of the fraud.

Mr. CONYERS. Subcommittee counsel.

Mr. BARRETT. Mr. Keeney, what should an attorney do if an individual involved in one of his cases wants to discuss or requests immunity? Should he not inform the Justice Department immediately?

Let me give you an example. The subcommittee staff got documents from the DOE files that indicated an attorney for Uni Oil, and who also represented about five other resellers currently targets of a grand jury down in Houston, was requesting immunity for the president of Uni in meetings with a lawyer from the Office of General Counsel of DOE. In return for granting the immunity, the lawyer and his principal would give damaging testimony against Albert Alkek, who was later convicted. Now, this was in the fall of 1977. This was 9 months before DOE referred the case to Justice, and nearly a year and a half before the Uni indictments came down. Did the Office of General Counsel of DOE ever tell you about this?

Mr. KEENEY. Mr. Barrett, I do not know. I have discussed, but I think it was in connection with *Conoco,* the immunity, possibly immunity for people in some of the Texas cases. I do not remember in connection with Alkek. My memory could be faulty. But the normal procedure, and what I would recommend in that situation, is that they take or have an assistant U.S. attorney take a proffer of the type of information that could be provided, a proffer that we could not use if in fact an arrangement were not made. It would usually be—it could be in terms of hypotheticals. This individual could testify, and then lay out a series of things, and it could not be used against the lawyer's client in the event that the deal is not worked out.

Mr. BARRETT. But you would want to be involved in that right away?

Mr. KEENEY. Yes; we would.

Mr. BARRETT. With respect to the *Citmoco* case, there was some indication by the attorney at DOE that he had wanted to pursue certain aspects of the case, and what he said was:

> One of the most difficult things for me to accept was the position presented to me by the Office of General Counsel and the Department of Justice by lawyers working on the Citmoco civil litigation, that we had a sister agency obligation, and that the Department of Energy was not the proper party to investigate the Department of Commerce, and that we all had to have a unified one-for-all-and-all-for-one position before the court and before the public eye.

Is that standard Department of Justice practice, to say "Don't investigate, don't query the Department of Commerce?"

Mr. KEENEY. You mean there is an allegation against people in the Department of Commerce? I am not sure I understand fully your question.

Mr. BARRETT. That was part of it. There was an allegation also—there was some question, since the Department of Commerce had issued the export licenses in the *Citmoco* case. And there was a question on what the basis is. And the attorney for the Department of Energy, then FEA, was stopped from meeting with or talking to the people at the Department of Commerce. This is in the transcript from last Wednesday.

Mr. KEENEY. And it was an open question as to whether or not it was just—whether Commerce had acted properly or improperly?

Mr. BARRETT. That is right. And he said that it was stopped by the sister-agency obligation. Is there such an obligation?

Mr. KEENEY. There is an obligation to look into any suggestion of impropriety, Mr. Barrett.

Mr. BARRETT. So you would say that the circumstances I have just recounted to you are not consistent with departmental policy?

Mr. KEENEY. Now, I may be speaking differently than one of my colleagues. If that were brought to me, I would suggest that it is the DOE people look into it, at least inquire, or that they give it to us, and let us inquire. It would depend upon the gravity of the situation presented whether or not—which of the approaches I would suggest taking.

Mr. BARRETT. What has happened to the Georgia State set-aside case? That was referred over in the fall of 1976.

Mr. KEENEY. It is in the grand jury.

Mr. DINGELL. Where is it?

Mr. KEENEY. Grand jury.

Mr. BARRETT. And that has been in the grand jury since when?

Mr. KEENEY. It has been a while.

I do not know offhand how long it has been in there, Mr. Barrett. I can give you that.

Mr. DINGELL. Can you tell us when the grand jury is going to act on that?

Mr. KEENEY. I can find out how close we are to winding up, Mr. Dingell.

Mr. DINGELL. Is the statute of limitations running on that case, too?

Mr. KEENEY. I don't think so.

Mr. BARRETT. Some 3 years ago the Subcommittee on Energy and Power started asking questions about the *Dupuy* case, and early this year you advised a staff member that the case was being closed out without prosecution.

Mr. KEENEY. That is right.

Mr. BARRETT. And following that Mr. Dingell wrote a letter asking for access to the files.

Mr. DINGELL. Was that statement correct?

Mr. KEENEY. That statement was correct. I did apprise Mr. Stockton to that effect. When I rechecked we found out another one of our sections was looking into a different aspect of it. We hope to wind that up fairly soon.

Mr. BARRETT. In any event——

Mr. KEENEY. That splintered off into more than one thing.

Mr. BARRETT. In any event, when the chairman wrote and asked for the files he was advised that the matter was an active case.

Mr. KEENEY. It is at the moment but I don't think it will be for very long. I think we are going to reach a disposition of it very shortly.

Mr. BARRETT. Do you know when that will be? Are you going to dismiss it?

Mr. KEENEY. It's a closed case. I don't know what the disposition is going to be.

Mr. BARRETT. As a hypothetical question, if you have an allegation of bribery, you do interview both sides, don't you?

Mr. KEENEY. Normally, yes.

Mr. BARRETT. Normally. Isn't that sort of standard procedure for the Bureau?

Mr. MULLEN. Not standard operating procedure. Normally it would, as Mr. Keeney indicated, I know which matter you are referring to and the decision not to interview in this case was mine, and the reason I made that decision was we sent two Bureau officials out to look into the matter of an alleged bribe. They came up with no evidence indicating that such had taken place.

We did have an ongoing investigation regarding the individual in question and I felt that if there were additional pertinent information relating to any bribe it would possibly turn up in that investigation.

Am I on the right case as far as you know?

Mr. BARRETT. Yes.

Mr. MULLEN. The matter was referred to the Justice Department and Mr. Keeney made the decision that the principal should be interviewed and he was.

Mr. DINGELL. Was this an FBI agent or former FBI agent?

Mr. BARRETT. Yes.

Mr. DINGELL. Does that present a particularly sensitive case, the fact that the person under investigation was a former member of the FBI?

Mr. MULLEN. No, sir.

Mr. DINGELL. It does not?

Mr. MULLEN. Not to me, no. In an allegation of bribery we will proceed no matter who is involved.

Mr. DINGELL. On a unilateral investigation it was dismissed?

Mr. MULLEN. No, no; it was not dismissed; it was referred to the Department of Justice for review and I at this point do not know the final decision of the Department of Justice.

Mr. BARRETT. Justice Department overrode your decision and decided the principal were all to be interrogated?

Mr. MULLEN. All principals were save one and there was an ongoing investigation regarding that individual and it was my decision not to interview him at that time.

Mr. BARRETT. Why?

Mr. MULLEN. I indicated that the investigators who were looking into the matter had developed no indication that a bribe had taken place. They had conducted a thorough investigation review of all files involved, interviews of all persons involved in the investigation, an interview of the individual who allegedly received the bribe, being a former FBI official, and the fact that there was an ongoing investigation regarding the principal, and again I thought of something, there was some additional information that would turn up in our investigation and this individual was eventually interviewed in connection with our investigation.

Mr. BARRETT. There was also enough of a basis to make a referral to the Justice Department?

Mr. MULLEN. Well, we have to in this case, because it involved a former Department official.

Mr. BARRETT. Is that in all cases?

Mr. MULLEN. Yes, sir. Allegations against officials have to be referred to the Department.

Mr. BARRETT. Mr. Chairman, I would ask also that the subcommittee be provided with a copy of the Bureau handbook. We have had earlier discussions about that, about obtaining the handbook, if we could.

Mr. MULLEN. The handbook, the entire handbook?

Mr. BARRETT. Yes.

Mr. MULLEN. We have several.

Mr. BARRETT. Let us look through all of them and we will decide which one.

Mr. MULLEN. That will tie up your committee for some time.

Mr. CONYERS. Are there two sets of handbooks?

Mr. MULLEN. We have several, one pertaining to personnel matters. Is that what you are interested in?

Mr. BARRETT. The handbook that describes how you do interviews, how you conduct investigations?

Mr. MULLEN. We previously had an FBI handbook but we have no such book at this time.

Mr. HENEHAN. We may be stuck on titles.

Mr. CONYERS. I think we are. I think if we get a listing of all the handbooks we will be able to find out.

Mr. MULLEN. Perhaps we can get together with the staff members and see exactly what they are interested in and make it available.

Mr. BARRETT. Were there any tape recordings made of Mr. McNeff and his interviews?

Mr. CARO. Not to my knowledge.

Mr. MULLEN. None to my knowledge.

Mr. HENEHAN. None to my knowledge.

Mr. DINGELL. If an FBI agent receives a job or accepts employment with a person who is subject to investigation by the FBI, what action is the agency supposed to take at that time?

Mr. MULLEN. If we have knowledge of it?

Mr. DINGELL. Yes.

Mr. MULLEN. None that I know of, Congressman. In this case that we are referring to, no job offer was made prior to the agent retiring from the FBI. In other words, the job offer was made after he had announced his retirement.

Let me correct that. After he had announced his retirement, the job offer was made.

Mr. CONYERS. You investigated that to determine that?

Mr. MULLEN. Yes, sir, because we had an allegation of a possible bribe.

Mr. DINGELL. You had an allegation of a bribe. Does the sequence of events pique your curiosity at all?

Mr. MULLEN. Pique my curiosity knowing all the facts of this case, no, sir.

Mr. DINGELL. Not at all?

Mr. MULLEN. No, sir. We thoroughly investigated it, again interviewed every individual assigned to the case in Denver, secretaries, reviewed the files, and we could find no evidence of a bribe.

We also learned, Congressman, that the material available in the Denver office, if this entire file had been removed and given to the individual to be investigated, it would not have helped one bit, there was not that much in the file there. All the investigation was

conducted in Houston, or by Houston agents, and some Houston agents traveled to Colorado to conduct the investigation.

I am satisfied that there was no bribe and no conflict of interest in this case.

Mr. DINGELL. Is this the kind of postretirement employment that the FBI is encouraging its agents to undertake.

Mr. MULLEN. No, we do not encourage any particular employment, Congressman. However, it is the type of employment many of our ex-agents do take and this particular assignment——

Mr. DINGELL. Working for folks they investigate?

Mr. MULLEN. Excuse me.

Mr. DINGELL. Working for folks they have investigated?

Mr. MULLEN. Not for individuals they have investigated but in the area of plant protection and executive security, many agents take positions of this sort.

Mr. DINGELL. Thank you.

Mr. CONYERS. Mr. Keeney, Mr. Fishkin, Mr. Mullen, Mr. Caro, Mr. Henehan, it has been a long day, you have been before two subcommittees instead of normally half that amount. Our colleagues have been very inquisitive and assertive.

We appreciate your cooperation in staying with us and we will excuse you at this time. Thank you all very much.

I would like to personally express a deep debt of gratitude to my colleague from Michigan and the chairman of the Subcommittee on Energy and Power for his assiduous and arduous efforts in this matter, to his very capable staff, who have worked very closely in an excellent spirit of cooperation with the staff of the Subcommittee on Crime, and express our gratitude to him.

Mr. DINGELL. I would like to make the same observation. I wish to commend you and your very able staff for the splendid cooperation and for the very happy and useful way in which we have worked together. It has been a privilege for me and I am sure it has been for my staff, and I certainly express my commendation to you and your very able staff for your very fine labors in this matter, and I thank you very much and look forward to working with you.

Mr. CONYERS. On that note, the hearings will adjourn.

[The following letter was received for the record:]

DEPARTMENT OF JUSTICE,
Washington, D.C., July 26, 1979.

Hon. JOHN D. DINGELL,
Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN DINGELL: This is in further reference to my appearance at the joint hearings concerning energy related matters and agreement to provide additional information concerning matters of interest to both of the subcommittees.

1. The Criminal disposition of the Citmoco (Citronelle-Mobile Gathering Co., Inc.) matter. This matter was reviewed and declined by the U.S. Attorney's office in the Southern District of New York. It was also reviewed by a senior attorney in the Fraud Section who also concluded that criminal action was not warranted.

With respect to a fraud upoon the government in connection with a violation of price regulations (18 U.S.C. § 371), it was concluded that there would be no price regulation violation if the sale involved constituted a valid "export". It appeared that the oil did enter "foreign commerce". There was an actual refinement and this was not a mere paper or sham transaction. Moreover, an export license was granted by the Department of Commerce. But even if it could have been proven that the sales were not valid "exports", it was concluded that prosecution was still not

warranted. An advice of counsel defense was available which would tend to negate criminal intent. Second, under a theory of conspiracy to defraud the United States, it was difficult to understand how one department (FEO/DOE) was defrauded when a second department (Commerce) was told precisely what would happen. Third, the factor of the openness of Bart Chamberlain, President of Citmoco Services, Inc. and Edward Carey, President of New England Petroleum Corporation, in submitting affidavits and specifying precisely the route that the oil would take tended to support a contention of no criminal intent. The routine manner in which the first three export licenses were granted further bolstered this position. The investigation disclosed no evidence of the illegal use of influence. Many of the same reasons applied to any possible charges of violating the allocation regulations.

The following other aspects were considered and it was concluded that they were without prosecutive merit:

(*a*) The Chamberlain payment of consultant fees to Coates.

(*b*) Chamberlain statements regarding the fourth export license.

(*c*) The conduct of Chamberlain, Gulf and W. P. Johnson in connection with the Ancora-Citronelle sale.

2. Allegations of former Federal Energy Administrator (FEA) John Sawhill reported in the Washington Post on December 17, 1974. In a news release of December 11, 1974, Mr. Sawhill announced the initiation by FEA of so-called Project Escalator to inquire into possible price-gouging in connection with the sale of fuel oil to public utilities. A review of matters referred by DOE (FEA successor agency) to the Department of Justice discloses that certain matters reported to you in the schedule of cases handled by the Energy Unit stemmed from the aforementioned project. These would include items numbered 10, 12, 17, 18, 19 and 21 on the schedule furnished the subcommittee.

3. The DOJ/DOE meetings of November, 1977 and December 8, 1977. To date, we have been unable to locate any minutes or memoranda relating to these meetings but are continuing our efforts.

If I can be of further assistance to you or your subcommittee staff in connection with any of these matters, please do not hesitate to contact me.

Very truly yours,

JOHN C. KEENEY,
Deputy Assistant Attorney General,
Criminal Division.

[Whereupon, at 4:25 p.m., the hearings were adjourned.]

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